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THE  
MARRIED WOMEN'S  
PROPERTY ACT  
1882.

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H. A. SMITH.

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THE  
MARRIED WOMEN'S PROPERTY  
ACT 1882.

WITH  
AN INTRODUCTION  
AND  
CRITICAL AND EXPLANATORY NOTES

AND  
Appendix,  
CONTAINING  
THE MARRIED WOMEN'S PROPERTY ACTS, 1870 & 1874,  
ETC.

BY  
H. ARTHUR SMITH, M.A., LL.B. (LOND.)

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.  
AUTHOR OF "A PRACTICAL EXPOSITION OF THE PRINCIPLES OF EQUITY."



LONDON :  
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1882.

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## PREFACE.

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THE object of this work is to present a complete view of the changes effected in the status of married women by the Act recently passed. It will be seen that not a few difficulties promise to arise in the interpretation thereof. In all cases of doubt or ambiguity which the author has discerned, he has not shrunk from stating his opinion as to the true construction; but he cannot hope to have been uniformly successful in his surmises. When not so, however, some useful purpose will doubtless have been served by the mere calling attention to the difficulty.

In order to an adequate survey of the effect of the Act, it has been necessary to enter to some extent into a consideration of many of the doctrines peculiar to equity. In doing so, however, it has not been attempted to make a complete analysis of such doctrines. The numerous decisions respecting separate estate in equity, a wife's equity to a settlement, and frauds on marital rights occupy many volumes of reports, and it would be vain to attempt an analysis thereof within the limits of such a volume as the present. Again, the position of married



women at common law would require, for complete expression, a considerable space, which could not be devoted to it here. In as far, therefore, as it has not been touched by the present Act, it has not been dwelt upon. These remarks may, perhaps, be needful to guard against the possible supposition that this volume may be utilised as a complete epitome of married women's property law.

It has not been deemed necessary to consider closely those parts of the Act of 1870, which are by the present statute rendered obsolete. Both this Act, however, and that of 1874, have of course to come in for considerable notice, and have, for convenience of reference, been accordingly printed *in extenso*, together with sections of other Acts relating to Married Women's Property, in the Appendix.

Attention here may, perhaps, be called with advantage to the use of the words "estate" and "property" in this volume. Following in the main the principal statute itself, the term "separate property" has been exclusively applied to statutory separate property. Following the common nomenclature of equity, the term "separate estate" has been confined to equitable separate estate. The attempt thus made to confine terms to definite and unambiguous meanings may, perhaps, be not altogether useless.

In previous volumes of a nature similar to this it has been common to append a series of forms of pleadings, decrees, &c., especially adapted to suits by married women. The present statute having, however, assimilated their position all but completely to that of *femes sole* and other persons *sui juris*, it has not been deemed necessary to follow a practice hitherto adopted but no longer called for.

H. A. S.

1, NEW SQUARE, LINCOLN'S INN.  
November, 1882.



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(45 & 46 VICT. C. 75)

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THE

# MARRIED WOMEN'S PROPERTY ACT, 1882.

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## INTRODUCTION.

### STATUS OF MARRIED WOMEN AT COMMON LAW.

THE history of the development of the laws of INTRODUC-  
England with respect to the rights and liabilities of TION.  
married women, is more or less familiar to every  
lawyer; and in a work designed chiefly as a work of  
reference for the use of practitioners, a retrospect  
thereof may be of the briefest description. Since,  
however, the innovations which have to so great an  
extent displaced the primitive doctrines of the Com-  
mon Law have fallen short of a complete revolution  
thereof, and even in the last and most extensive  
measure, no attempt has been made at such a codifi-  
cation of the law as might render an acquaintance  
with its ancient principles practically unnecessary, it  
will be desirable succinctly to state the position of  
married women under the pure Common Law, and  
also from time to time to note the steps by which that  
position has been modified. Having thus before us  
the point of departure and the lines of progress, it  
will be the easier to apprehend the precise character

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INTRODUC- of the changes which have been introduced, and to  
TION. estimate their effects.

Husband  
and wife  
deemed one  
at law.

From the time of the intermarriage, the Common Law regarded the husband and wife but as one person, and allowed of but one will between them, which it placed in the husband as the head and ruler of the family (Bacon's Abr., vol. i., p. 694).

The consequences of this unity of person admit of a two-fold division ; firstly, those which affect the ownership of property ; secondly, those which concern the dealings or relation of the parties *inter se*.

Effects of  
marriage  
on wife's

To summarise the effects of the marriage status as to rights of property, we must distinguish between the following various species of property ; real property, chattels real, chattels personal, choses in action.

Real  
property,

1. *As to real property.* On marriage, and during its continuance, the husband was entitled to receive or to dispose of the whole of the rents and profits of any lands of his wife, without being in any way accountable to her. He could not, however, alienate the corpus or fee without her co-operation, and for such alienation it was necessary, after the abolition of Fines and Recoveries, for the wife to be separately examined and to acknowledge the deed (3 & 4 Will. IV. c. 74). If the wife survived the husband, the land remained wholly hers, free from any liability for her husband's debts. If the husband survived the wife, the land descended to her heir, subject, however, on certain conditions, to the husband's life tenancy by the curtesy of England.

Chattels  
real,

2. *As to chattels real.* The husband acquired full

power to enjoy or dispose of the chattels real of his wife by act *inter vivos*, but not by will. If he survived his wife, he became entitled *jure mariti* to all chattels real which had vested in possession in him during the coverture, without the necessity of administering to her estate; and on taking out administration he became entitled to her reversionary interests in similar property. If the wife survived her husband, and he had not disposed of her chattels real during his life, they survived to her, unchargeable with his debts.

INTRODUCTION.  
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3. *As to chattels personal.* Personal chattels in the possession of the wife, including, of course, all her money, were by marriage completely transferred to the ownership of the husband; and any similar property acquired by her in any manner during the coverture immediately passed into her husband's absolute power and dominion. He could dispose of them as he chose *inter vivos*, or by will; and even in the absence of such disposition no possibility of right remained in her. They passed as a part of the husband's estate to his legal administrator or executor.

Chattels  
personal,

4. *As to choses in action.* The choses in action of a woman were not so conclusively lost to her by coverture. They so far vested in her husband that he might reduce them into possession without any assent or assistance of the wife, and when reduced into possession they became absolutely his. If he survived his wife without having reduced them into possession, he became entitled to them only on taking out administration to her estate. If the wife survived her husband, and he had not reduced them into possession, they survived to her. These doctrines

Choses in  
action.



**INTRODUCTION.** applied equally to rights *ex contractu* and those *ex delicto*.

**Generally.** Thus, though in certain events a chance remained to a married woman of her ultimately enjoying certain portions of her property, the effect of her marriage was to completely denude her of all her property in possession; and this confiscation applied as thoroughly to all property accruing to or earned by her during the coverture, as to that which was previously her own.

**Wife not chargeable with debts.** It was a natural consequence of this disposition of the wife's property, that she should at the same time be released from all past obligations and from all power of incurring liability for the future. Whatever debts she owed at her marriage, passed to the debit of her husband, and during the coverture, though she might in some cases bind her husband by contracting as his agent, it was impossible for her either by contract or tort to create an obligation on herself, or on the property which had been hers. Her separate existence was not so much as contemplated, as long as her husband was alive (a).

**Effect of marriage on the acts of husband and wife.** The consequences of the legal unity of the persons of husband and wife as to their relations *inter se* only require brief mention. Originally they were incapable of conveying property one to another; the power to do so only arose by an ingenious application of the Statute of Uses. Similarly no legal

(a) For the purposes of this general view it has not been deemed necessary to refer to the exceptional circumstances of a husband's outlawry, or otherwise being *civiliter mortuus*, nor to the custom of the city of London in favour of married women, such cases being of little service illustratively, and in practice to a great extent obsolete.

obligations could arise between husband and wife, whether by tort or contract; and the evidence of one was not generally admissible either for or against the other. (For a concise summary of the effects of this unity, see *Phillips v. Barnett*, 1 Q. B. D. 436, 440.)

INTRODUC-  
TION.

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Such then, in short, is the point of departure whence the various steps have been taken which have now almost amounted to the placing of the husband or wife on a footing of juristic equality. As in nearly all cases in which the Common Law has been reformed, two agencies have been successively employed; firstly, the Courts of Equity; secondly, the Legislature. To consider separately the changes introduced by these agencies respectively would in some respects be desirable. But on the other hand they are now so interwoven one with the other that such separate treatment would endanger the frequent confusion of past and present law. On the whole, therefore, it has been deemed preferable to set out under each section of the Act we are about to consider, those doctrines of Equity which it suggests, and then to add such comments as may seem necessary to call attention to the changes effected by statute. By this means, and by the addition of a copious index, it is hoped to enable the reader to ascertain the existing law without the necessity of making cross references to various parts of the work.

Equity and  
legislation  
the sources  
of reforms.

It is, perhaps, scarcely necessary to point out that this work purports only to be a commentary on the recent statute, not a manual of the general law relating to married women, a subject far too wide for adequate discussion within the present limits.

**INTRODU-**  
**TION.**  

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No attempt, therefore, has been made to travel beyond the boundaries which have been touched by the statute in question; and the work will perhaps be none the less useful for being thus confined within the scope of its title.

THE

# MARRIED WOMEN'S PROPERTY ACT, 1882.

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(45 & 46 VICT. C. 75.)

## ARRANGEMENT OF SECTIONS.

- § 1. Married woman to be capable of holding property, and of Act, 1882.  
contracting as a feme sole.
- § 2. Property of a woman married after the Act to be held by  
her as a feme sole.
- § 3. Loans by wife to husband.
- § 4. Execution of general power.
- § 5. Property acquired after the Act by a woman married  
before the Act to be held by her as a feme sole.
- § 6. As to stock, &c. to which a married woman is entitled.
- § 7. As to stock, &c. to be transferred, &c. to a married  
woman.
- § 8. Investments in joint names of married women and others.
- § 9. As to stock, &c. standing in the joint names of a married  
woman and others.
- § 10. Fraudulent investments with money of husband.
- § 11. Moneys payable under policy of assurance not to form  
part of estate of the insured.
- § 12. Remedies of married women for protection and security  
of separate property.
- § 13. Wife's ante-nuptial debts and liabilities.
- § 14. Husband to be liable to his wife's debts contracted before  
marriage to a certain extent.
- § 15. Suits for ante-nuptial liabilities.
- § 16. Act of wife liable to criminal proceedings.
- § 17. Questions between husband as to property to be decided  
in a summary way.
- § 18. Married woman as an executrix or trustee.
- § 19. Saving of existing settlements, and the power to make  
future settlements.
- § 20. Married woman to be liable to the parish for the main-  
tenance of her husband.

- Act, 1882, s. 1 (1). § 21. Married woman to be liable to the parish for the maintenance of her children.
- § 22. Repeal of 33 & 34 Vict. c. 93 ; 37 & 38 Vict. c. 50.
- § 23. Legal representative of married woman.
- § 24. Interpretation of terms.
- § 25. Commencement of Act.
- § 26. Extent of Act.
- § 27. Short title.

WHEREAS it is expedient to consolidate and amend the Act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the Act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act (1870)":

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Married woman to be capable of holding property and contracting as a feme sole.

1. (1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.

In this section we at last reach the assertion of a broad principle towards which the various reforms, equitable and statutory, of the last hundred years had been leading us. The privileges which had before been exceptional, are hereby made general; and this concession once made, the rest of the Act follows almost as a matter of course.

Having seen that the capacity to hold separate estate was unknown to the common law, we have now, in accordance with the plan indicated, firstly to show how equity modified the law in this respect, and secondly to state the effect of the more extensive modifications introduced by statute.

## I.—SEPARATE ESTATE IN EQUITY.

Act, 1882,  
s. 1.

**1. How Created.**—In order that property belonging to a woman may on her marriage be deemed her separate estate in equity, it is requisite that equity should be able to discern, either from the terms of the instrument through which she receives the property, or from the nature of the transaction by which she acquires it, an intention that she should have the sole use thereof. Where such an intention is apparent, equity will, speaking generally, regard her as a *feme sole* with respect to the property in question. If it is in the hands of trustees, they are held to be trustees for her; and if no trustees have been appointed, equity will treat the husband as her trustee (*Newlands v. Paynter*, 4 My. & Cr. 408; *Parker v. Brooke*, 9 Ves. 583). Depends on intention.

In by far the greater number of cases in which a wife enjoys a separate estate, this intention is expressed in some instrument of limitation, such as a will, or deed of gift, or marriage settlement; and no particular form of words is necessary to give effect to it, provided only that it is clear (*Stanton v. Hall*, 2 R. & My. 180). Intention expressed.

We accordingly find a variety of expressions which the Courts have deemed sufficient to evince an intention in opposition to the husband's legal rights. The most formal and usual words to effect this are "for her sole and separate use"; but in addition to these the following forms have been held to effectuate the same purpose: "for her separate use" (*Massy v. Rowen*, 4 L. R. H. L. 288, 294); "for her own use, and at her own disposal" (*Inglefield v. Coghlan*, 2 Coll. 247); "for her own use, independent of her husband" (*Wagstaffe v. Smith*, 9 Ves. 520); "for her own use and benefit, independent of any other person" (*Margetts v. Barringer*, 16 Sim. 568); "that she should receive and enjoy the issue and profits" (*Tyrrel v. Hope*, 2 Atk. 558). So also where there was a direction that the interests and profits of a fund should "be paid to her, and the principal to her, or to her order by note in writing under her hand" (*Hulme v. Tenant*, 1 Bro. C. C. 16); or for "her receipt to be a sufficient discharge" (*Lee v. Prieaux*, 3 Bro. C. C. 381); or that the husband "is to have no control" (*Edwards v. Jones*, 14 W. R. 815). What expressions suffice.

**Act, 1882,**  
**s. 1.**  
 On the other hand, in the following cases it was considered that the words used did not sufficiently indicate an intention to bar the husband's right at law: a direction to pay to a married woman and her assigns (*Lamb v. Milnes*, 5 Ves. 517); or to pay a fund "into her own proper hands to and for her own use and benefit" (*Tyler v. Lake*, 2 R. & My. 183); so also where property was given "to her own use and benefit" (*Kensington v. Dollond*, 2 My. & K. 184); "to her absolute use" (*Ex parte Abbott*, 1 Dea. 338); or "to her own proper use and benefit" (*Blacklow v. Laws*, 2 Ha. 49); or "to be under her sole control" (*Massey v. Parker*, 2 My. & K. 174).

Expres-  
 sions  
 deemed in-  
 sufficient.

Instru-  
 ments con-  
 sidered as  
 a whole.

Tendency  
 to favour  
 wife.

Interpreta-  
 tion of  
 "sole  
 use."

It is fortunately not incumbent on us to reconcile these numerous decisions one with another, for it will readily be observed how fine is the distinction, if indeed there be anything at all worthy the name of distinction, between some expressions which have been deemed sufficient to protect the property, and others which have not. It is in fact impossible by the mere quotation of a few words used in the limitation to form a decided opinion as to the effect of the instrument containing them. The nature of the instrument, the language employed in other limitations contained therein, and the context generally, may all serve as corroborative evidences of intention or may have a contrary effect; and moreover, where informal expressions of doubtful import are employed, it is inevitable that judgments should differ. Remembering that the tendency of the Courts has been generally in favour of the wife's claim, the above quotations and cases will serve to assist in forming a correct opinion as to the effect of the various expressions which may be met with in practice.

Perhaps no one formula has occasioned more argument on this head than the words "sole use." The result of the cases which have turned thereon seems to be that if these words are used to qualify a gift to a woman already married, they will suffice to exclude the husband's marital right, and to create a separate estate (*Inglefield v. Coghlan*, 2 Coll. 247; *Bland v. Dawes*, 17 Ch. D. 794). Also if the intended beneficiary be a woman about to marry, or there are other expressions in the instrument from which it can be gathered that a future marriage was contemplated by the settlor or donor, these words will

import exclusion of the husband, and create a separate estate (*Ex parte Ray*, 1 Madd. 199, 207; *Re Tarsey's Trust*, 1 Eq. 561). Further, if in any case these words are used and the property is at the same time vested in trustees, it seems that they will be sufficient to create a separate estate (*Adamson v. Armitage*, 19 Ves. 416). But if the gift is to a widow or to a woman unmarried, not made in contemplation of marriage and without the interposition of trustees, it has been held by the highest authority that the words "sole use and benefit" will not import exclusion of a future husband, and will not suffice to impress on the property the character of separate estate (*Gilbert v. Lewis*, 1 De G. J. & S. 38; *Lewis v. Mathews*, 2 Eq. 177; *Massy v. Rowen*, 4 L. R. H. L. 288; *Hartford v. Power*, 2 L. R. Eq. 212).

In all these cases, the question as to the intention to exclude the husband's legal claim has turned on the construction of the expressions used by conveyancers. In other cases the nature of the transaction has sufficed to induce the same effect. Thus, presents from a husband to his wife, given absolutely, and not merely to be worn as personal ornaments, are considered as separate estate (*Graham v. Londonderry*, 3 Atk. 393), and it would seem from the same authority that a present of a personal chattel from a stranger to a married woman would also be so regarded. It is, however, to be observed that where a wife has asserted a gift of such a nature from her husband, the Court has required the same to be established by some evidence in corroboration of that of the wife (*Grant v. G.*, 34 Beav. 623); though slight circumstances have been deemed sufficient corroboration when money alleged to have been so given has come to the husband in right of his wife, or has originally been her separate estate (*Rowe v. R.*, 2 De G. & S. 294). It is of course an effectual mode of constituting property separate estate, if a husband makes himself a trustee for his wife of property to be so held (*Mews v. M.*, 15 Beav. 529); and where a husband has made an outlay on real property settled to his wife's separate use, the improvement has been deemed to accrue to her separate use (*Barrack v. McCulloch*, 3 K. & J. 110, 124).

Moreover, money saved by a married woman out of her separate estate is considered as separate estate (*Gore v. Knight*, 2 Vern. 535; *Askew v. Rooth*, 17 Eq. 426; *Savings out of separate estate.*

*Act*, 1882,  
s. 1.

Intention  
presumed  
from cir-  
cumstances.

Gifts to  
wife.

Direct.

In trust.

Outlay on  
separate  
estate.



Act, 1882, *Butler v. Cumpston*, 7 Eq. 16); and similarly, arrears of  
 s. 1. separate income in the hands of trustees retain their original character (*Ashton v. McDougall*, 5 Beav. 56).  
 Arrears. Savings out of an allowance made by her husband for household purposes, however, are not separate estate, unless she is living separate from him (*Barrack v. McCulloch*, 3 K. & J. 114, 5 W. R. 38; *Brooke v. B.*, 25 Beav. 342).

Separation In other cases an agreement between a husband and  
 between wife has sufficed to impress her property with the character  
 husband of separate estate; for instance, an agreement to live  
 and wife. separate, and not to interfere with property which each might subsequently acquire (*Haddon v. Fladgate*, 1 Sw. & Tr. 48; *Pride v. Bubb*, 7 Ch. 64); and where a husband living separate from his wife has remitted money to her for her support and maintenance, such money and any savings which the wife may make thereout has been regarded as separately hers (*Brooke v. B.*, *supra*). And apart from any statutory provisions, the Court of Chancery treated as separate estate property acquired by a wife after her husband had deserted her (*Cecil v. Juxon*, 1 Atk. 278).

Having thus illustrated how, under the protection of equity tribunals, married women may acquire property to their separate use, free from marital control, the next consideration is to inquire what powers they possess over such property. The consideration of the liabilities to which it has been held subject will fall more appropriately under the heading of the next subsection.

**2. Rights of alienation.**—Putting out of view, for the present, that special class of cases in which by the operation of another device of equity, a married woman is expressly restrained from alienation, the following rules define the extent of her powers respecting the different kinds of separate estate.

Personalty. As to personalty she may freely dispose of it, by act *inter vivos* or by will, and this whether it be in possession (*Fettiplace v. Gorges*, 1 Ves. Sr. 46), or reversion (*Sturgis v. Corp*, 13 Ves. 190).

Realty. As to real estate, she has a complete power of disposition over the rents and profits (*Stead v. Nelson*, 2 Beav. 245); and she may also dispose of the *equitable* fee at her pleasure (though there may be no express power of appointment given) either by will or deed, which need not

be acknowledged under 3 & 4 Will. IV. c. 74 (*Taylor v. Meads*, 4 De G. J. & S. 597, 34 L. J. Ch. 203); and whether or not the estate is vested in trustees (*Hall v. Waterhouse*, 13 W. R. 633). She may thus transfer the property as well to her husband as to any one else (*Grigby v. Cox*, 1 Ves. Sr. 518), though a husband so receiving property must be prepared to show that it was clearly intended as a gift (*Rich v. Cockell*, 9 Ves. 375). For the alienation of the legal fee, however, a deed acknowledged under the said statute, remained necessary.

Where the separate property consists of a life interest with a power of appointment over the remainder, she has also the same power as if the *corpus* were fully vested in her (*London Chartered Bank of Australia v. Lemprière*, 4 L. R. P. C. 572, *Bishop v. Wall*, 3 Ch. D. 194); but such cases must be carefully distinguished from those in which a gift of the *corpus* is made to the married woman, but only the life interest is expressed to be to her separate use. In such a case, the *corpus* being unaffected by the separate use, was not in her power, and an attempted devise of it was invalid (*Troutbeck v. Boughey*, 2 Eq. 534).

It is natural that equity, having so far recognised a power of disposition over separate estate, should apply its own peculiar doctrines to other transactions respecting it, less formal than a deed or will. We thus find that agreements respecting such property may be enforced by specific performance (*Gaston v. Frankum*, 2 De G. & S. 561), and, as we shall presently see, such agreements are generally binding on the property in question.

### *Pin Money and Paraphernalia.*

This is a convenient place in which to mention two peculiar classes of property analogous in some respects to separate estate; viz., Pin-money and Paraphernalia.

Pin-money is an allowance settled on a wife before marriage for the purpose of her separate personal expenditure. It is designed to defray the personal expenses, and to purchase dress and ornaments suitable to her husband's rank, so that it shall not be necessary for her to be often applying to her husband for money. Gifts and payments of money made for the same purposes during the coverture, are also considered as pin-money (*Howard v. Digby*, 8 Bli. N. S. 259).

**Act, 1882,**    The principal distinction between pin-money and ordinary separate estate arises from the purpose for which it is settled. Being intended merely for current and personal expenditure, the wife has no right to save or otherwise dispose of it; and accordingly, if she permits it to run into arrear, she cannot on her husband's death, claim payment for more than one year (*Aston v. A.*, 1 Ves. Sr. 267; *Townshend v. Windham*, 2 *ib.* 7). Moreover, if the husband actually pays for his wife's apparel, and provides for her private expenses, such payments have been held to satisfy the pin-money, so as to leave no claim at all for arrears at his death (*Thomas v. Bennett*, 2 P. Wms. 341; *Fowler v. F.*, 3 *ib.* 355). In no case has a wife's executor a right to claim any arrears (*Ibid.*: *Howard v. Digby*, *supra*).

**Arrears.**

**Paraphernalia.**

The paraphernalia of a wife consist of such apparel and ornaments as are suitable to her condition in life, such as jewels given to be worn on her person (*Graham v. Londonderry*, 3 Atk. 394). The family jewels of the husband, though worn by the wife, are not included, unless she acquires them as such by gift or bequest (*Jervoise v. J.*, 17 Beav. 570). As to gifts of jewels by a husband to his wife after marriage, it apparently depends on the intention whether they shall be deemed paraphernalia or separate estate. If given only for the express purpose of her wearing them, they are paraphernalia; if given absolutely, they become separate property. Such articles given by a person other than the husband, are usually deemed to constitute separate property (*Lucas v. L.*, 1 Atk. 270; *Mercier v. Williams*, 9 Q. B. D. 337).

**Husband's power over paraphernalia.**

During the life of the husband and wife, the husband may dispose of the wife's paraphernalia either by sale or gift *inter vivos*; but he cannot dispose of them by will (*Seymour v. Tresilian*, 3 Atk. 353). If, however, he purports to do so, and by the same will confers other benefits upon his wife, she will be put to her election between her paraphernalia and such benefits (*Churchill v. Small*, 2 Keny. pt. 2, p. 6). The wife has no power to dispose of her paraphernalia, either by gift or will, during the husband's lifetime (1 Bright, H. & W., 287).

**Liability to husband's debts.**

The paraphernalia are liable to the debts of the husband (*Campion v. Cotton*, 17 Ves. 273); but in the administration of the assets of a deceased husband, his widow's claim to paraphernalia is preferred to the general

legacies (*Tipping v. T.*, 1 P. Wms. 729). She is, therefore, entitled to marshal the assets in her favour in all cases in which a general legatee can do so. Where, moreover, the husband in his lifetime has not alienated but has merely pledged his wife's paraphernalia, on his death she is entitled to have them redeemed, if the estate be sufficient, even to the prejudice of his legatees; her claim being higher than that of pure volunteers (*Graham v. Londonderry*, *supra*).—(Smith's Principles of Equity, 360). Act, 1882,  
s. 1.

## II.—STATUTORY SEPARATE PROPERTY PRIOR TO 1882.

**1. The Divorce Acts.**—Sect. 21 of 20 & 21 Vict. c. 85, enacts that: “a wife deserted by her husband, may at any time after such desertion, if resident in the metropolitan district, apply to a police magistrate, or if resident in the country to justices in petty sessions, or in either case to the Court, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her husband or his creditors or any person claiming under him; and such magistrate or justices or Court, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion from her husband, and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a *feme sole*: Provided always that every such order, if made by a police magistrate or justices at petty sessions shall within ten days after the making thereof be entered with the Registrar of the County Court within whose jurisdiction the wife is resident; and that it shall be lawful for the husband and any creditor or other person claiming under him to apply to the Court, or to the magistrate or justices by whom such order was made, for the discharge thereof, provided also, that if the husband or any creditor or person claiming under the husband shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable at the

**Act, 1882,** suit of the wife (which she is hereby empowered to bring)  
**s. 1.** to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid. If any such order of protection be made, the wife shall, during the continuance thereof be, and be deemed to have been, during such desertion of her, in the like position in all respects with regard to property and contracts, and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation."

In case of a judicial separation the wife to be considered a *feme sole* with respect to property she may acquire, &c.

§ 25. "In every case of a judicial separation, the wife shall, from the date of the sentence, and whilst the separation shall continue, be considered as a *feme sole* with respect to property of every description which she may acquire or which may come to or devolve upon her; and such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead: Provided that if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband while separate."

Order for protection of earnings, &c., of wife to be deemed valid.

Further, by 21 & 22 Vict. c. 108 it is enacted that:  
 § 8. "In every case in which a wife shall under this Act or under the old Act of the twentieth and twenty-first Victoria, chapter eighty-five, have obtained an order to protect her earnings or property, or a decree for judicial separation, such order or decree shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal with the wife, be deemed valid and effectual; and no discharge, variation, or removal of such order or decree shall prejudice or affect any rights or remedies which any person would have had in case the same had not been so reversed, varied, or discharged in respect of any debts, contracts, or acts of the wife incurred, and entered into, or done between the times of the making such order or decree, and of the discharge, variation, or reversal thereof, and property of or to which the wife is possessed or entitled for an estate in remainder or reversion at the date of the desertion or decree (as the case may be) shall be deemed

to be included in the protection given by the order or Act, 1862, decree." s. 1.

In the particular circumstances to which these sections apply, it will be observed that the rights they confer go far beyond those which spring from the principles of equity above set forth. In effect, as from the time of the orders therein provided for, they completely displace the common law rights of the husband. They take from him not only his power over his wife's property during her life, but the right which would otherwise accrue to him on her death intestate. General observations.

These Acts being of course still in undisturbed operation, the following decisions thereunder may with advantage be perused. Decisions under 20 & 21 Vict. c. 85.

A wife having been deserted by her husband, her father afterwards bequeathed to her a fund for her separate use, without power of anticipation. She subsequently obtained a protection order under the statute. It was held that she was entitled to payment of the fund (*Cooke v. Fuller*, 26 Beav. 99).

A married woman entitled in reversion to a legacy, having been deserted by her husband, obtained a protection order, which in terms only affected to protect property acquired by her own industry, or to which she was entitled as a trustee. It was, however, held that notwithstanding the form of the order, the effect of s. 8 of 21 & 22 Vict. c. 108, was to protect also the reversionary interest (*Re Whittingham's Trusts*, 10 Jur. N. S. 818).

Furniture bought with the gains of prostitution, and placed in a brothel to be used there, is not protected by a statutory order, as being acquired by the lawful industry of a woman deserted by her husband (*Mason v. Mitchell*, 11 Jur. N. S. 89). In the same case a doubt was expressed whether any effect should be given to a protection order obtained by fraud and conspiracy, where the woman had not in fact been deserted by her husband.

A husband deserted his wife immediately after their marriage in 1846, and she was supported by her sister. In 1848 an annuity was bequeathed to her for life, which the trustee accumulated until 1862, when the wife obtained a decree for judicial separation. In 1863, the Court, on the petition of the wife and her sister, ordered the whole accumulations to be paid over to the sister

Act, 1882, to the exclusion altogether of the husband (*Re Ford*, s. 1. 32 Beav. 621).

A husband and wife mortgaged the wife's reversionary interest in a fund. Afterwards, and before the reversion fell into possession, the wife obtained a decree for judicial separation. Upon the reversion afterwards falling in, in the husband's life-time, it was held that the mortgage did not affect it, being a security only on the husband's interest, which had ceased, and that the funds belonged absolutely to the wife (*Re Insole*, 35 Beav. 92, 1 Eq. 470).

Where a married woman, living separate from her husband, and having obtained a protection order, died, the Court granted administration of her effects to a guardian elected by her son, for his use and benefit, without citing the father, the guardian finding justifying securities to meet the contingency of the father's becoming entitled through the death of the son during minority (*In the goods of Stephenson*, 1 L. R. P. & D. 287).

A woman having been deserted by her husband, acquired some property by her own exertions, which she disposed of by will. She subsequently obtained a protection order. It was held that the order had a retrospective effect, extending back to the commencement of the desertion, and that the will was a valid instrument to pass the property acquired by her during such desertion (*In the goods of Elliott*, 2 L. R. P. & D. 274.)

By a decree of judicial separation the wife's *choses in action* not reduced into possession at the date of the decree, become her absolute property, as if she were a *feme sole* (*Johnson v. Lander*, 7 Eq. 228). In this case the wife instituted a suit to enforce her equity to a settlement of a trust fund, and while the suit was pending obtained a decree of judicial separation. The Court ordered the fund to be paid to her, refusing the husband his costs.

Where a married woman entitled to a legacy charged on real estate which had not been reduced into possession by her husband, obtained a protection order, it was held that the legacy on being paid to her after the date of the order was property which then came to or devolved upon her within sections 21 and 25 of the Act, and that her receipt was a good discharge (*Re Coward and Adam's Purchase*, 20 Eq. 179).

A married woman became in 1866 entitled on the

death of an intestate, to a share of his estate. Part of Act, 1882, her share was paid by the administrator to her husband, s. 1. and in 1867 some shares in a joint stock company, which had been appropriated by the administrator in respect of the remainder of the wife's share, were, with the assent of the husband and wife, transferred into their joint names. In May, 1874, the husband deserted the wife, and in 1874 she obtained a protection order. In 1876 the company resolved upon a voluntary liquidation, and the liquidator gave notice to the husband and wife that he was prepared to refund £900 in respect of the capital and of the shares. The wife thereupon, suing as a *feme sole* under the order, commenced an action against the company and her husband, claiming payment of the £900 to her as a *feme sole*. It was held that she was entitled to the money, the transfer into the joint names of the husband and wife not amounting to a reduction into possession by the husband; and the money being within the terms of the order, property acquired by her after the desertion (*Nicholson v. Drury Buildings Estate Co.*, 7 Ch. D. 48).

**2. The Act of 1870.**—Comprehensive, however, The necessity for further legislation. as these enactments are in the special circumstances to which they apply, their actual social effect has of course been very circumscribed; and the remedial energy of equitable principles being exhausted, it still remained for the Legislature to devise a measure which should extend over a wider area the benefit of juridical equality for which the conscience of society had been prepared. The first instalment of such a measure appeared in the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93). This statute having been repealed by the far more comprehensive recent enactment, does not now call for minute analysis. In as far as its provisions are common to it and the Act of 1882, it will be more convenient to consider them when dealing with this latter statute; in as far as they are obsolete, but brief mention is required. It will nevertheless not be idle to present a general view of a measure, which forms so conspicuous a landmark in so great a reform.

The salient features of the Act of 1870 are two in number; firstly, it introduces in certain cases the doctrine of separate estate into the common law as distinguished from equity; secondly, it provides certain novel remedies at law, both as between the wife and her husband. General view of Married Women's Property Act, 1870.



Act, 1882, band, and as between her and third parties. The first  
 s. 1. of these changes is effected by sections 1 to 8 inclusive  
 and section 10; the second by section 9 and sections 11  
 to 14. A general outline of the changes introduced will  
 here suffice.

Separate  
 estate in  
 wages, &c.

1. It secures to a married woman (*whether married before or after the passing of the Act*) the enjoyment for her separate use, independent of any husband, of any wages or earnings acquired or gained by her after the passing of the Act (9th August, 1870) in any employment, occupation, or trade which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, with all investments of such wages, earnings, money, or property (s. 1).

Personalty.

2. Sect. 7 enacts that "Where any woman married *after the passing of the Act* becomes during her marriage entitled to any personal property as next of kin or one of the next of kin of an intestate, or to any sum of money not exceeding £200 under any deed or will, such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to the woman for her separate use, and her receipts alone shall be a good discharge for the same:" and by sect. 8, "Where any freehold, copyhold, or customaryhold property shall descend upon any woman married after the passing of this Act as heiress or co-heiress of an intestate, the rents and profits of such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipts alone shall be a good discharge for the same."

Realty  
 descended.

Policy of  
 insurance.

3. Sect. 10 enacts that "A married woman may effect a policy of insurance upon her own life or the life of her husband for her separate use," and also that "A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains be subject to the control of the husband, or to his creditors, or form part of his estate;" adding certain provisions as to the appointment of a trustee thereof and payment to him.

These sections include all that is affected by the Act, 1882, with respect to new species of separate estate. It is to be observed with respect thereto, that a distinction existed as to jurisdiction between equitable separate property as already described, and the statutory separate property thus created by the legislature. The latter alone carried with it the powers and privileges conferred by the Act; but it appears that both classes of property henceforth became alike liable to the obligations imposed upon married women by the Act; for instance, the creditors' rights created by sect. 12 (*infra*, p. 63), have been held to apply to equitable separate estate, notwithstanding even a restraint upon anticipation (*Sanger v. S.*, 11 Eq. 470; *London & Provincial Bank v. Bogle*, 7 Ch. D. 773).

s. 1.  
Distinction  
between  
equitable  
and statu-  
tory sepa-  
rate estate.

### III.—SEPARATE PROPERTY UNDER THE ACT OF 1882.

We have now seen that in order to the enjoyment of Incom-  
separate estate by virtue of the doctrines of equity, it has pleteness  
been necessary to show an intention, express or clearly of previous  
implied, to impress thereon that character: Further, that remedies.  
the enjoyment of separate estate under 20 & 21 Vict. c. 85, and 21 & 22 Vict. c. 108, was conditioned on the desertion of the wife by, or her judicial separation from her husband: And again, that the Act of 1870 was limited in its operation to certain modes of acquisition, chiefly to wages and earnings acquired in an employment or occupation carried on by the wife separately from the husband; to personal property coming to her during the coverture under an intestacy, or any sum of money not exceeding £200 coming to her during the coverture through any deed or will; and to the rents and profits of real property descending to her as heiress of an intestate. In all cases not falling under one or other of these heads, the husband's marital right remained, and marriage was still an act of resignation of the wife's property. The extensive importance of such cases is at once seen when we consider that the equitable relief afforded by marriage settlements has always been confined to a small proportion of the population; and that as long as a husband lived with his wife there was no statutory protection of any personalty vested in possession of the woman at the time of the marriage, or of any leaseholds, stock, shares, &c., or sums of money exceeding £200 coming to her by

Act, 1882, deed or will after marriage, or of any real property  
 s. 1. acquired by her otherwise than by descent.

The fundamental proposition of the present statute is that "*a married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.*" In dealing with sections 2 and 5 we shall presently see the force of the words, "in accordance with the provisions of this Act," those sections dealing respectively with the cases of women married after and women married before the commencement of the Act. The words of the section classify for us the rights which it confers.

Legal  
 right to  
 separate  
 estate  
 general.

**1. As to acquisition.**—Henceforth, the necessity of resorting to conveyancers in order to impress on property the character of separate estate, is avoided. The right hitherto equitable and dependent on an express or implied intention to displace the contrary legal right of the husband, now becomes legal and general. It had indeed, long ago been held that where the intention was clear, property might be treated as separate estate though no trustee was appointed (*Newlands v. Paynter*, 4 My. & Cr. 408); but as equity could only operate through the medium of a trust, in such cases the husband was held and treated as the trustee (*Parker v. Brooke*, 9 Ves. 583). The right now being legal, the intervention of a trustee becomes, so far as the mere purpose of securing the separate use is concerned, a superfluity. But it still remains open for settlors, if they so choose, to place the property in the hands of trustees as before. And if it is designed to effect a restraint upon anticipation, this will still be necessary, the restraint being an incident of an equitable, not of a legal separate use. By sect. 19, the effect of settlements now existent or hereafter to be made, is preserved; nothing in this Act, therefore, will convert a separate estate now equitable into a legal one.

Trustees  
 when  
 necessary.

Mode of  
 acquisition  
 immaterial

It results from the general wording of the Act that the manner of acquisition is no longer material. This will more particularly appear under the examination of sections 2 and 5. It suffices now to observe that in the absence of express agreement to the contrary, property acquired by or devolving upon a married woman will be held by her as separate property at law.

**2. As to holding.**—A married woman in possession of separate property is to hold it as if she were a *feme sole*. Her powers of disposition come under view in the next paragraph, and her powers of investment under the consideration of sections 6 to 9. But little, therefore, calls for comment on this heading, beyond the remark that her enjoyment and management of her property will be independent of her husband's control.

*s. 1.*  
Separate  
enjoyment.

**3. As to disposition.**—It is not necessary here to do more than refer to the powers of disposition over equitable separate estate already stated. They, of course, remain unaffected. The present statute, however, goes beyond them. Thus, as to real property, there is no longer any restriction on the alienation of the legal estate. Hitherto, by virtue of 3 & 4 Will. IV. c. 74, a married woman has been able to dispose of her estates of freehold, only with the concurrence of her husband, and by a deed acknowledged by her, after separate examination before a judge or two commissioners; and similarly copyhold by surrender, jointly with her husband, after separate examination by the steward or his deputy. Henceforth, the power of disposition being given "in the same manner as if she were a *feme sole*," the concurrence of the husband will no longer be necessary, nor the aforesaid formalities required.

Power of  
disposition.

Realty.

Similarly, the protection of Malins' Act (20 & 21 Vict. c. 57) over reversionary interests in personalty is dispensed with, and such, unless protected by settlement, may be aliened at the married woman's sole discretion without deed acknowledged or separate examination.

Reversion-  
ary per-  
sonalty.

It must, however, be remembered that, by s. 5, the Act does not apply to property vested before the 1st of January in women married before that date. As to such property, therefore, the old law as to deeds acknowledged and separate examination remains in force, subject to the amended practice with reference thereto introduced by the Conveyancing Act, 1882, s. 7, Appendix, p. 97.

Old law  
when ap-  
plicable.

45 & 46  
Vict. c. 39.

Again a complete testamentary power is given as to both real and personal property. Hitherto a married woman has been able to dispose by will of her equitable estate, but has had no power, save with her husband's concurrence, of disposing of a legal fee, or reversionary interest in personalty. In the absence, therefore, of her

Testa-  
mentary  
powers.

Act, 1882, husband's co-operation, her legal freehold of necessity s. 1 (2), (3), descended to her heir, subject to her husband's curtesy; her choses in action passed to her husband on his taking out administration; and of course personalty in possession she was incapable by law of holding. Henceforth she may will her property of all descriptions, legal as well as equitable.

Law of  
intestate  
succession  
unaffected.

It is to be observed that the statute makes no alteration in the law as to intestate succession, either by or from a married woman, herein differing from 20 & 21 Vict. c. 85, s. 25, which of course remains applicable in the particular cases to which it relates. The legal freeholds of a married woman are thus placed in a similar position to that in which her equitable freeholds have hitherto been. Over both alike she has a testamentary power; but in both cases alike, if she do not exercise her power, the property will descend to her heir at law, subject, under the usual conditions, to her husband's tenancy by the curtesy. This right is now decided to apply, in the absence of a will, as well in the case of an equitable fee settled to a separate use, as in the case of other equitable estates (*Appleton v. Rowley*, 8 Eq. 139; *Cooper v. Macdonald*, 7 Ch. D. 288).

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

(4.) Every contract entered into by a married woman with respect to and to bind her separate

property shall bind not only the separate property Act, 1882,  
 which she is possessed of or entitled to at the date s. 1 (2), (3),  
 of the contract, but also all separate property which (4).  
 she may thereafter acquire.

## I.—AS TO POWERS OF CONTRACT.

### 1.—*Contracts in Equity.*

Under this heading it is important first to observe that equity has not, in the strict juristic meaning of the term, recognised in married women a power to contract (Pollock, *Contracts*, 65, 69, ed. 2). A contract entered into by a person *sui juris* creates a personal obligation, and may or may not at the same time give rise to a specific charge on the contractor's property. The Courts of equity long ago recognised the power of a married woman to specifically charge her separate estate, and it was early established also that a charge was created thereon by her bond or other instrument under seal (*Hulme v. Tenant*, 1 Bro. C. C. 16). The liability has, as we shall presently see more fully, been since extended so as to charge her debts generally on her separate estate. But equity has never held a married woman capable of imposing on herself a personal obligation (*Attwood v. Chichester*, 3 Q. B. D. 722); and so far it has fallen short of investing her with a full power of contract. Under this heading, therefore, our inquiry goes no farther than to ascertain under what circumstances a married woman creates a charge in equity on her separate estate. Conspicuous amongst the authorities is the case of *Johnson v. Gallagher* (3 De G. F. & J. 494), in which, after observing on the previous decisions wherein specialty contracts such as bonds, and written engagements such as promissory notes, had been held to be payable out of separate estate, Turner, L.J., laid down the principle that if an engagement, formal or informal, written or oral, was made with reference to and upon the faith and credit of the separate estate, it should bind that estate. In that case the defendant was living separate from her husband, and under the circumstances it was considered that the Court was bound to impute to her the intention to deal with her separate estate, unless the contrary was proved (see also *Matthewman's Case*, 3 Eq. 787).

No power of contract in equity in strict sense.

Charge on separate estate depends on intention.

*Johnson v. Gallagher.*

Act, 1882, s. 1 (2), (3), (4). A somewhat special class of cases arose out of the numerous instances in which the limitation of the separate estate took the form of a settlement on the wife for life with a general power of appointment.

Life estate with power of appointment. After considerable conflict of opinion the law in such cases has reached a result which has been summarised as follows:—

Power exerciseable by deed or will. If property is settled on a married woman for her separate use for life, with power to dispose thereof by deed or will, and in default over to a stranger, the Court will, during her lifetime only deal with the limited interest (*Field v. Sowle*, 4 Russ. 112; *Paul v. P.*, 20 Ch. D. 742; overruling *Paul v. P.*, 15 Ch. D. 580). But after her death, whether the power has been exercised or not the corpus is held liable to her general engagements (*Heatley v. Thomas*, 15 Ves. 596; *Mayd v. Field*, 3 Ch. D. 587; *Skinner v. Todd*, W. N. 1881, 166). *A fortiori* this will be the case if the limitation over in default of appointment is to her executors and administrators (*London Chartered Bank of Australia v. Lempriere*, 4 L. R. P. C. 572; *Holloway v. Clarkson*, 2 Ha. 521).

By will only. If the power is exerciseable by will only, and there is a limitation over to strangers in default of appointment, and the power is not exercised, the general engagements will not, it seems, prevail against the persons entitled in default of appointment (*Nail v. Punter*, 5 Sim. 555, 562; *London Chartered Bank, &c. v. Lempriere, supra*, at p. 592). But if the power in this case is exercised, or if the limitation in default of appointment is to children, it is now decided that the property is liable to her debts, just as if it had been settled absolutely (*Re Harvey's Estate*, *Godfrey v. Harben*, 13 Ch. D. 216; *Hodges v. H.*, 20 Ch. D. 749. See Coote on Mortgages, by Mackeson, p. 214).

Intention when presumed. Whatever the form of the limitation of the property, therefore, and whatever the nature of the engagement, as long as there appears a clear intention on the part of a married woman to bind her separate estate, the separate estate becomes liable thereto. In *Johnson v. Gallagher*, as we have seen, such intention was presumed from the fact that the husband and wife were living apart; and if such be the fact, it is immaterial that there has been no legal separation (*McHenry v. Davies*, 10 Eq. 88). But it is by no means essential to the application of the doctrine that there should be even separation in fact. Where a

husband and wife are living together, the presumption is **Act, 1882,** apparently against the existence of an intention to bind **s. 1 (2), (3),** the separate estate (*Bromley v. Norton*, 21 W. R. 155), but it is still open to creditors to adduce other evidences of such intention (*London Chartered Bank, &c. v. Lem-priere*, 4 L. R. P. C. 572). (4).

Long before the liability of separate estate to be charged with the contracts or engagements of a married woman was thus fully developed, it had been determined that it was subject to charge in respect of any fraud committed by her in connexion therewith (*Savage v. Foster*, 9 Mod. 35), and also in case of her committing or concurring in a breach of trust with respect thereto. (*Clive v. Carew*, 1 J. & H. 199; *Brewer v. Swirles*, 2 Sm. & G. 219; *Jones v. Higgins*, 2 Eq. 538). But such cases must not be confounded with those in which it was sought to make her estate chargeable for a tort committed by her, wholly unconnected with the separate estate. In such circumstances her husband became liable, but not her separate estate (*Wainford v. Heyl*, 20 Eq. 321). Liability for fraud.  
Breach of trust.  
Secus as to general torts.

It only remains to observe that in the administration of a married woman's separate estate, it is distributed amongst her creditors *pari passu*, as equitable assets (*Owens v. Dickenson*, Cr. & Ph. 48). Separate estate equitable assets.

**Restraint on Anticipation.**—Such being in effect the general conditions incident to the enjoyment of equitable separate estate, brief allusion must suffice to that particular class of cases in which the separate use is limited by a restraint upon anticipation. Courts of equity have recognised the validity of a restriction of this nature on the *jus disponendi* of separate estate by married women, at least ever since the case of *Jackson v. Hobhouse* (2 Mer. 483), and the only condition requisite for its imposition is that a clear intention to that effect shall be manifested. Restraint on anti-cipation.

In addition to the common forms of expression, which are equivalent, with the addition of more or less conventional verbiage, to the clear words "without power of anticipation," it has been held that effectual restraint is imposed by a direction that a trustee shall during the lady's life receive the income "when and as often as the same shall become due," and pay it as she shall appoint, or permit her to receive it to her separate use, and that her receipts, or the receipts of any person to whom she may ap-



**Act, 1882,** point the same after it shall become due, shall be valid  
 s. 1 (2), (3), discharges for it (*Field v. Evans*, 15 Sim. 375). So also, if  
 (4), the property is "not to be sold or mortgaged" (*Steedman*  
*v. Poole*, 6 Ha. 193), or if it is declared that the wife  
 "shall not sell, charge, mortgage or incumber it" (*Bag-*  
*gett v. Meux*, 1 Coll. 138).

Expres-  
 sions  
 deemed in-  
 sufficient.

On the other hand the following expressions have been deemed insufficient to show a clear intention to restrain anticipation: Where there has been a bequest of stock for the separate use of a wife for life, with a direction that it should remain during her life, and be under the orders of the trustees made a duly administered provision for her, and the interest given to her on her personal appearance and receipt (*Re Ross's Trust*, 1 Sim. N. S. 196); and where the wife is to receive the separate property "with her own hands from time to time," or "so that her receipts alone for what shall be actually paid into her own proper hands shall be good discharges" (*Parkes v. White*, 11 Ves. 222; *Acton v. White*, 1 S. & S. 429). In short, words which amount only to an amplification of the expression "separate use" will not add to its force by effecting a restraint on anticipation. It must be observed, moreover, that a clause restraining anticipation will be invalid if its effect would be to transgress the rules as to perpetuities or remoteness (*Fry v. Capper*, Kay, 163; *Re Ridley*, 11 Ch. D. 645; *Cooper v. Laroche*, 17 Ch. D. 368; *Armitage v. Coates*, 35 Beav. 1).

Rules as to  
 perpetuity  
 to be  
 regarded.

Effects  
 of the  
 restraint.

Where, then, the separate estate is effectually subjected to a restraint on anticipation, the wife can only deal with the interest thereof after it has become payable. If the fund is in Court she cannot call for a transfer of it to herself (*Re Ellis's Trust*, 17 Eq. 409; *Re Clarke's Trust*, W. N. 1882, p. 93; though see also *Re Croughton's Trust*, 8 Ch. D. 460); nor can she assign an apportioned part of unpaid interest up to the date of the assignment (*Re Brette*, 2 De G. J. & S. 79).

The clause is equally efficacious to prevent the corpus of the property from becoming liable to her debts or engagements. Not even for fraud is such property chargeable (*Clive v. Carew*, 1 J. & H. 199); still less for common contractual liabilities (*Pike v. Fitzgibbon*, 17 Ch. D. 454), except at least debts contracted before marriage, by virtue of 33 & 34 Vict. c. 93, s. 12 (*Sanger v. S.*, 11 Eq. 470). Not until quite recently could a Court of equity

dispense with the restraint on anticipation. It is now, **Act, 1882**, however, able to do so, with her consent (44 & 45 Vict. **s. 1** (2), (3), c. 41, s. 39, Appendix, p. 95). Moreover the restraint does not prevent the exercise of the powers conferred on a tenant for life of a settled estate under the Settled Land Act, 1882 (45 & 46 Vict. c. 38, s. 61, Appendix, p. 101). (4).

## 2.—Statutory Powers of Contract before 1882.

**1. The Divorce Acts.**—The Act 20 & 21 Vict. c. 85, In cases of judicial separation wife considered a *feme sole* for purposes of contract and suing.  
enacts as follows :—

§ 26. “In every case of a judicial separation, the wife shall, whilst so separated, be considered as a *feme sole* for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any engagement or contract she may have entered into or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant: Provided, that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessities supplied for her use: Provided also, that nothing shall prevent the wife from joining at any time during such separation in the exercise of any joint power given to herself and her husband.”

Under this section it was decided that a married woman who was deserted by her husband and was left executrix and residuary legatee under a will, and who obtained a protection order after proving the will, was entitled to transfer consols standing in the name of her testatrix in the books of the Bank of England, and to receive dividends thereon as if she were a *feme sole* (*Bathe v. Bank of England*, 4 K. & J. 564). It was to confirm this construction of 20 & 21 Vict. c. 85, that the following enactment was passed.

By 21 & 22 Vict. c. 108 it is further enacted as follows:—

§ 7. “The provisions contained in this Act, and in the said Act of twentieth and twenty-first Victoria, chapter eighty-five, respecting the property of a wife who has obtained a decree for judicial separation or an order for protection, shall be deemed to extend to property to which such wife has become or shall become entitled as executrix, administratrix, or trustee since the sentence of separation or the commencement of the desertion (as the case may be); &c. Provisions respecting property of wife to extend to property vested in her as executrix, &c.

Act, 1882, and the death of the testator or intestate shall be deemed s. 1 (2), (3), to be the time when such wife became entitled as executrix or administratrix."

General  
contracting  
power  
under Act  
of 1870  
doubtful.

**2. The Act of 1870.**—It has been questioned whether the Act of 1870 did or did not confer a formal general power of contracting. It did not so do in express terms, as in the case in 20 & 21 Vict. c. 85, s. 26 ; but it did confer on her a right of action for the recovery of any separate property, and invested her with the same remedies civil and criminal for the protection and security thereof as if she were a *feme sole*. The effect of this was to enable her to enforce contracts made with her with reference to her separate estate. Thus in *Summers v. City Bank* (9 L. R. C. P. 580), a married woman carrying on a business separately from her husband was held entitled to sue her bankers for dishonouring cheques drawn by her in the course of such business ; but the Court declined to affirm the general proposition that without reference to particular circumstances the Act created a power to contract. And in *Howard v. Bank of England* (19 Eq. 295), Jessel, M. R., expressed the view that it gave no power to a married woman to contract which she did not possess before, but only made certain property, property to her separate use, so as to be within the remedies well known in equity, superadding certain remedies at law which it was considered desirable to give in respect thereof.

Particular  
power.

In particular cases, this Act expressly conferred contracting powers, for instance, as to investing in public funds, &c. (ss. 2—4, Appendix, p. 84), and as to effecting insurances for her separate benefit (s. 10, Appendix, p. 87). It will, however, be more convenient to consider these matters under the corresponding sections of the later Act (ss. 6, 7 & 11, *infra*).

### 3.—*Contracting powers under the Act of 1882.*

General  
power  
now con-  
ferred.

The present statute no longer leaves the power of contracting to be hesitatingly deduced, as was the case under the Act of 1870, but expressly affirms it, making a general rule that which the Divorce Acts provided in the particular cases of desertion and judicial separation. The great importance of this change demands for it the most careful attention.

Sub-section 3 provides that in every case the presumption shall be that a contract entered into by a married woman was entered into with respect to and to bind her separate property; and by sub-section 4, separate property acquired after the contract is made liable thereto. The doctrines and decisions of equity are thus to some extent confirmed and to some extent enlarged. In equity, as decided in *Johnson v. Gallagher* (3 De G. F. & J. 494) the intention to bind separate estate was presumed where the wife was living apart from her husband, and also where the transaction would be otherwise unmeaning, as where a married woman gave a guaranty for her husband's debt (*Morrell v. Cowan*, 6 Ch. D. 166), or joined him in making a promissory note (*Davies v. Jenkins*, ib. 728). But otherwise, the presumption was against the contract (*Bromley v. Norton*, 21 W. R. 155). In this respect the rule of equity has been varied, and for the future it will rest on a married woman defendant to disprove the intention if she would exonerate her separate property. Such contrary intention as the Act requires would be most easily shown in the case of contracts by which a married woman could previously at common law bind her husband; for instance, contracts entered into for necessities by a wife living with her husband, when the husband does not supply the wife with them or with the means of obtaining them (see *Montague v. Benedict*, 2 Sm. L. C. 467, and notes thereon); or contracts entered into by the wife as manager of her husband's house as to matters necessarily connected with the management (see *Manby v. Scott*, 2 Sm. L. C. 429; *Debenham v. Mellon*, 6 App. C. 24). Unfortunately the law in this respect is by no means satisfactorily clear, and doubtless this question of intention, now thrown upon the wife to answer, will frequently raise perplexing conflicts of evidence.

The decision of *Pike v. Fitzgibbon* (17 Ch. D. 454) has doubtless been instrumental in giving rise to sub-s. 4. It was in this case held that the general engagements of a married woman could only be enforced against so much of her separate estate as she was entitled to, free from any restraint on anticipation, at the time when the engagements were entered into. In as far as the restraint on anticipation on equitable separate estate is concerned, the present statute does not interfere with this;

Act, 1882,  
s. 1 (2), (3),  
(4).

Presump-  
tion in  
favour of  
binding  
separate  
property.

After-  
acquired  
property  
bound.

Act, 1882, but in cases where there is no restraint, the law will in s. 1 (2), (3), future be the reverse of that here laid down; and a (4). married woman's contracts will be enforced against whatever unfettered separate estate she may have at the time of the judgment, or even the execution thereof, and it will be immaterial whether such separate property is legal or equitable in its nature. (See also p. 36.)

It is to be observed that the word "contract" here includes the acceptance of any trust, or the office of executrix or administratrix (sect. 24). The change effected as to the acceptance of the office of trustee or executrix and its consequences will be more appropriately considered under the heading of sect. 18.

## II.—RIGHTS OF ACTION BY AND AGAINST MARRIED WOMEN.

Having already seen the complete disability and immunity of married women in this respect at common law, we have, as before, to consider in order the practice in equity, and then the powers and liabilities created by statute.

### 1.—*Suits in Equity.*

Suits by married woman in equity.

Husband necessary party.

Next friend necessary.

By the practice of the Court of Chancery, it was formerly necessary, in all suits by a married woman, that her husband should be a party, either as plaintiff or defendant. It has been proper to join the husband as co-plaintiff in all cases where the object of the action has been to recover the wife's property, or property belonging to the husband in right of the wife, or where the husband and wife have had distinct interests in the property (see *Roberts v. Evans*, 26 W. R. 280). When a married woman sued as a *feme sole*, e.g. when her husband was an exile, an alien out of the jurisdiction, a transported criminal, a felon, or traitor, or where she had obtained a protection order, or was judicially separated, or in cases under s. 11 of the Married Women's Property Act, 1870; and also when the husband's interest was adverse to the wife's, it was the proper course to make the husband a defendant. And whenever the wife appeared as plaintiff without her husband, it was necessary for her to sue with a next friend. We need not here enter into greater detail, as

the practice thus commenced has since been embodied **Act, 1882,**  
and extended by the statutes to which reference follows. **s. 1 (2), (3),**  
**(4).**

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## 2.—*Statutory Rights of Action before 1882.*

**1. The Divorce Acts.**—Under this head reference must again be made to 20 & 21 Vict. c. 85, ss. 24, 25, 26, and 21 & 22 Vict. c. 108, ss. 7, 8 (pp. 15, 16 and 29), which at the same time confer the right of holding separate property, the right of contract, and rights of action and liability to action, both in contract and tort. It is of course unnecessary again to quote the sections in question. The simplicity and comprehensiveness of the language, which places married women coming within the terms of the Act in the position of *femes sole*, are such as to require little comment. And the effect of the Act of 1882 being, as we shall presently see, to place all married women on a similar footing, such remarks as might here be made, will be more conveniently placed under the heading of the leading statute. Attention, however, may be here called to *In re Rainsdon's Trusts* (4 Drew. 446; 5 Jur. N. S. 55), in which it was decided that a married woman who had obtained a protection order under the Acts might present a petition without a next friend. In this case the Court ordered the payment out to her of a legacy, to the payment of which she became entitled subsequently to her desertion by her husband; and it was held to be unnecessary to serve the husband with the petition. (See also *Re Kingsley's Trust*, 26 Beav. 84).

**2. The Acts of 1870 and 1874.**—The following sections of the Act of 1870 are devoted to the provision of new remedies for and against married women :—

By section 9, it is provided that in all questions between a husband and wife as to any property declared by the Act to be the separate property of the wife, either party may apply by motion or summons in a summary way to the Court of Chancery or to a County Court (irrespective of the value of the property), and that thereupon the judge may make such order, direct such inquiry, and award such costs as he shall think fit, subject to appeal as in the case of a suit or equitable plaint (Appendix, p. 86).

By section 11, it is enacted that a married woman may maintain an action in her own name for the recovery of

**Act, 1882,** any wages or other property declared by the Act to be s. 1 (2), (3), her separate property, or of any property belonging to (4). her before marriage, and which her husband has agreed shall belong to her as her separate property; and that she shall have in her own name the same remedies, both civil and criminal, against all persons whomsoever, for the protection and security of such wages, &c., and of any chattels or other property purchased or obtained by means thereof for her own use, as if such wages, &c., belonged to her as an unmarried woman; and that in any indictment or other proceeding it shall be sufficient to allege such wages, &c., to be her property.

rights of  
action  
under Act  
of 1870.

Ante-  
nuptial  
debts.

By section 12, "A husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy such debts, as if she had continued unmarried."

Liability  
to support  
pauper hus-  
band and  
children.

Sections 13 and 14 respectively impose on married women having separate property, liability to the parish for the maintenance of their pauper husbands or children (Appendix, p. 88).

These quotations from the Act will suffice to give as clear an idea as is now required of the scope of the changes thereby introduced. The details of the provisions we shall have occasion more particularly to consider in connexion and comparison with the recent statute.

As to the ante-nuptial debts, it will be more convenient to consider the effect of the statutes under the heading of ss. 13 and 14 (*infra*, pp. 61-68).

36 & 37  
Vict. c. 66,  
Order  
XVI.  
rule 8

**3. The Judicature Acts.**—By Order XVI. rule 8, of the Supreme Court, issued under the above Acts, it is enacted that married women may sue as plaintiffs by their next friends in the manner previously practised in the Court of Chancery; and may also, by leave of the Court or a judge, sue or defend without their husbands, and without a next friend, on giving such security (if any) for costs as the Court or a judge may require.

The practice of the Court of Chancery here referred to has been already briefly indicated. In dealing with the present Act we shall have occasion to refer fully to the law for the future regulating such actions as are comprised in this rule. It is, therefore, at present only material to

note that actions brought by or against a married woman **Act, 1882,** as a *feme sole* under 20 & 21 Vict. c. 85, or the Married **s. 1 (2), (3),** Women's Property Act, 1870, are not affected by this rule, **(4).** the legal right in such cases having been already provided for. It may also be observed that under this rule, where a married woman suing had separate estate, it was held that security for costs was not to be required (*Noel v. N.*, 13 Ch. D. 510; *Brown v. North*, 9 Q. B. D. 52).

### 3.—*Actions by and against Married Women under the Act of 1882.*

The section before us completes the removal of the disabilities and immunities of married women, conferring on them the right and liability to sue and be sued in all respects as *femes sole*. With reference to the grounds of action, we have already considered the powers of contract conferred, and have already observed that though equity enforced the engagements of a married woman against equitable separate estate, it did not hold it liable for general torts (*Wainford v. Heyl*, 20 Eq. 321), and of course in this respect the Judicature Acts made no difference. A married woman was also disabled (save in the particular cases included under 20 & 21 Vict. c. 85, and the Act of 1870) from suing alone for torts committed against her. Her husband could sue for them jointly with her, and he acquired as his own whatever damages were recovered (*Sanille v. Sweeney*, 4 B. & Ad. 514, 522). The Act of 1870 did no more than confer a right of action in respect of torts committed against separate property (*Summers v. City Bank*, 9 L. R. C. P. 580; *Moore v. Robinson*, 48 L. J. Q. B. 156). The present Act gives a right to sue for any tort, and provides that any damages or costs recovered shall be separate property, and that any damages or costs recovered against her shall be payable out of her separate property and not otherwise.

It has already been stated that at common law a husband was liable for the torts of his wife, whether committed before or after marriage. The Act of 1874 and s. 14 of the present Act limit, as we shall hereafter observe, the husband's liability in respect of torts committed before marriage. But though this section gives a right of action against the wife in respect of torts

Grounds of  
action  
extended  
in both  
contract  
and tort.

Husband's  
liability  
for torts  
of wife.



Act, 1882, committed during the coverture, it does not purport to s. 1 (2), (3), displace the common law remedy against the husband. (4).

The result, therefore, apparently is that a person aggrieved in such a case has the alternative remedies, of suing either the husband, or the wife, or the husband and wife jointly.

Husband's  
right to  
sue for  
tort to  
wife.

The legal right also of a husband to sue alone in certain cases for a tort committed against his wife appears to remain as it was. It is true that the wife has a remedy in respect of the same wrong, and it may be argued that since her choses in action are by s. 24 included in her separate property, the right to sue in such a case is now exclusively her own. It is, however, submitted that a husband's right in respect of an injury to his wife, *per quod consortium amisit*, is something distinct from and independent of the right conferred upon her by this Act. The wife has now, as regards the ownership of property and the right to sue in contract and in tort, a recognised separate existence; but she is none the less still in a sense the property of her husband, as a servant is; and as such, an injury to her, by which her husband is deprived of her company, originates a chose in action appertaining to him. If this be the true view of the case, the tort-feaser will now be subject to two actions; on the same principle as that which sustains two actions in the case of a tort committed on a servant (Stephen's Comment., vol. ii., 223; *Mortimer v. Gerber*, 3 M. & Gr. 88). In cases in which hitherto it has been necessary for a husband and wife to sue jointly for a tort, the proper remedy will now doubtless be an action by the wife alone.

After-  
acquired  
property  
liable for  
torts,  
*quære?*

It will, moreover, be observed that sub-section 4 is in its terms confined to *contracts* entered into by a married woman; and it may thus be argued that in actions for tort, only such property will be bound as she was entitled to at the date of the wrongful act, there being no statutory provision including after-acquired property. On the other hand, it must be remembered that this case is, notwithstanding *Pike v. Fitzgibbon* (17 Ch. D. 454), uncovered by decision. Equitable separate estate was, as we have seen, not liable for general torts at all. The liability of separate property in respect thereof is newly created, and notwithstanding the reasoning above suggested, we incline to the opinion that the Courts will carry the remedy for tort to the same extent as that

which the Act gives in respect of contract ; namely to all **Act, 1882,**  
 the separate property owned by the defendant at the **s. 1 (2), (3),**  
 time of the execution. She is liable to suit in all respects **(4).**  
 as a *feme sole* ; and there seems to be no valid reason  
 why the remedy should be any narrower than if she were  
 a *feme sole*.

With reference to the form of action by or against a  
 married woman, the Act displaces the provisions of Order  
 XVI. r. 8, above quoted. No leave of the Court will be **Next friend**  
 any longer necessary to enable her to sue without a next **unneces-**  
 friend or without giving security for costs. This applies **sary.**  
 to all legal proceedings as well as to actions : thus, as  
 under 20 & 21 Vict. c. 85, a married woman may petition  
 or apply to the Court in any way, alone. (See *Re Rains-*  
*don's Tr.*, 4 Drew. 446 ; 5 Jur. N. S. 55).

Complete and independent rights of action being thus **Cverture**  
 given, it is presumed that on the principle *cessante ratione* **no longer**  
*cessat ipsa lex*, coverture will no longer be a disability **a disa-**  
 within the meaning of the Statutes of Limitations. **bility.**

In actions against a married woman, it has hitherto **Husband**  
 been necessary to make the husband a defendant, except **not a**  
 in cases in which she was by some previous statute sued **necessary**  
 as a *feme sole* ; otherwise she could not be sued alone, even **party.**  
 in respect of her separate estate (*Hancocks v. Lablache*,  
 3 C. P. D. 197 ; 26 W. R. 403). Under the present  
 statute it will be necessary to join the husband as defen-  
 dant only when the plaintiff shall seek to establish a  
 claim either wholly or in part against both of them (see  
 sect. 15). And since in other cases the joinder of him as **Misjoinder**  
 a defendant will be unnecessary, it will render the plain- **of husband.**  
 tiff liable to pay the husband's costs in case he fails to  
 establish his claim against him.

Hitherto, suits by and against a woman as a *feme sole*  
 being exceptions to the general rule, the proper form has  
 been to state on the pleadings that she is the wife of A. B.  
 suing (or sued) as a *feme sole* (*Marston v. Smith*, W. N.  
 1877, p. 169). Seeing that this will in future be the  
 common form of action, this statement will be no longer  
 necessary.

We have above seen that though in equity a complete **Personal**  
 remedy was provided against the separate estate of a **process.**  
 married woman, the equitable decree differed from a  
 judgment at law in that it could not be enforced by  
 personal process against her. For the form of decree see

Act, 1882, *Picard v. Hine* (5 Ch. 274); and this being unaffected by s. 1 (2), (3), the Judicature Acts, it has recently been held that final judgment could not be signed against a married woman

under Order XIV. r. 1 (*Durrant v. Ricketts*, 8 Q. B. D. 177). It has, however, been held that when a married woman sued as a *feme sole*, her obedience to orders of the Court might be enforced by attachment (*Otway v. Wing*, 12 Sim. 90). Moreover, married women are liable to imprisonment under the Debtors' Act, 1869, on proof of means being sustained (*Dillon v. Cunningham*, 8 L. R. Ex. 23; *Chard v. Jervis*, 9 Q. B. D. 178); and where the existence of separate estate has been shown, the decree of a Court against it may be enforced against a married woman by the same process as against a man (*Hope v. Carnegie*, 7 Eq. 261).

Under the present statute, the remedy against a married woman apparently goes to the same extent as that against a *feme sole*; and if so, she will be liable to all legal processes for the enforcement of the judgment.

Injunctions.

By the same reasoning, also, there will apparently be no hesitation in the future as there has hitherto been, with respect to the granting of an injunction against married women, or appointing receivers of their estates. In *Warne v. Routledge* (18 Eq. 497), an injunction was refused on the ground that a married woman could not bind herself by a personal contract (see also *National Bank v. Thomas*, 24 W. R. 1013; *Barber v. Gregson*, 49 L. J. Ex. 731; *Robinson v. Pickering*, 16 Ch. D. 660). The present statute removes the *ratio decidendi*, on which the refusal was based, and in this as in other matters places married women on precisely the same footing as other suitors.

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*.

Bankruptcy of married women.

Before the present Act, after having been for some time in a doubtful position, it was at length decided that a married woman could not be made bankrupt (*Ex parte Holland*, 9 Ch. 307; *Ex parte Jones*, 12 Ch. D. 484),

though it had been held that a married woman trading **Act, 1882,** by the custom of the city of London might be so adjudicated (*Ex parte Carrington*, 1 Atk. 206); and similarly of the wife of a convict (*Ex parte Franks*, 7 Bing. 762). s. 1 (b), s. 2.

It is important to observe that now, the rule is extended only in the particular case of a woman *trading separately from her husband*. None of the provisions as to the bankruptcy of non-traders are therefore to be applied; and even if a married woman be carrying on trade with her separate capital in partnership with her husband, the words of this section exclude her; such cases being to some extent provided for by sect. 3. As to what amounts to carrying on a trade separately, see p. 41.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of the marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic or scientific skill.

Property of a woman married after the Act to be held by her as a *feme sole*.

This section particularly applies the principles laid down in sect. 1, sub-s. 1 to the case of women married after the commencement of the Act (January 1st, 1883). Under that section we have considered the general changes effected as to the acquirement, enjoyment, and disposition of separate property. Further comments are suggested by the language of this section.

1.—*As to property belonging to the woman at the time of the marriage.*

In equity, a settlement of property made by a married woman during treaty for marriage without the concurrence of her intended husband, has been held to be voidable by him as a fraud on his marital rights;

Fraud on marital rights in equity.

Act, 1882, even though he may have been ignorant of the existence of the property (*Goddard v. Snow*, 1 Russ. 485).  
 s. 2. It has not been necessary for the husband to show actual fraud or active deception; the mere concealment of the transaction being a sufficient constructive fraud to sustain his case (*St. George v. Wake*, 1 My. & K. 610; *Downes v. Jennings*, 32 Beav. 290). As to the conditions of the husband's remedy generally, and the circumstances which sufficed to bar it, see *Strathmore v. Bowes* (1 Ves. Jr. 22; 1 W. & T. L. C. 406, and notes thereon).

Act of 1870, s. 3. Section 3 of the Act of 1870 provided that any married woman, or woman about to be married might apply to the Governor and Company of the Bank of England [or Ireland], that any sum forming part of the public stocks and funds, not being less than £20 to which the woman so applying was entitled, or which she was about to acquire, might be transferred to or made to stand in her name or intended name to her separate use, and that on such entry the same should be deemed her separate property and transferred and the dividends paid as if she were an unmarried woman (Appendix, p. 84).

This section applied to women married as well before as after that Act, and had the effect of rendering the intervention of trustees unnecessary to the separate enjoyment of separate property in the funds. But it was not designed to, nor did it displace the husband's equity above stated: and accordingly a woman in contemplation of marriage who proceeded under the section, could not effectually act without her intended husband's concurrence.

Fraud on marital rights no longer relieved against.

The present section, however, is of greater scope, and puts an end at once to the necessity of a settlement to secure property to the woman's separate use on her marriage, and therefore, it is submitted, to the doctrine of fraud on marital rights, which was based on the concealment of a settlement.

Compare sect. 5 as to the position of women married before 1st January, 1883.

## 2.—As to property acquired after marriage.

The difference in comprehensiveness between the present Act and that of 1870 as to property devolving upon married women has been already sufficiently adverted to.

Wages and The clause relating to wages and earnings practically

follows that of the previous Act, so that the decisions thereon are still applicable. But first, observe that the words used are such as to exclude any claim for wages or earnings in any business, trade, or occupation carried on in connexion with the husband. For instance the Act does not go so far as to entitle a married woman to a *quantum meruit* for services rendered to her husband; for assistance rendered in the management of his business, nor apparently, to claim a share of profits to her separate use if she supplied a share of the capital. The Act only contemplates or relates to business separately carried on. The question whether the business is carried on separately is one of evidence to be determined according to the circumstances of the case (*Smallpiece v. Dawes*, 7 C. & P. 40). It has been held that although a separate business may be carried on by a wife while residing with her husband, yet if the husband takes such a part therein as to make himself personally liable, the business is not carried on separately from the husband within the meaning of the Act (*Laporte v. Cosstick*, 23 W. R. 131; see also *Lovell v. Newton*, 4 C. P. D. 7).

Act, 1882,  
s. 2.  
earnings in  
separate  
business.

Separate  
business,  
what?

As to loans to a husband for the purposes of his business, see sect. 4; and as to questions generally arising between husband and wife respecting the wife's claim to separate property, sect. 17.

"Wages and earnings" have been held to include stock-in-trade and capital (*Ashworth v. Outram*, 5 Ch. D. 923). The same case decided that an agreement between a husband and wife that she shall carry on a separate business, if made before marriage, is binding both on the husband and his creditors; if after marriage on the husband alone; but the contracting power now given to married women renders the latter part of the decision now immaterial. As to the distinction between wages and earnings, see *Gordon v. Jennings* (9 Q. B. D. 45).

Wages and  
earnings.

Though the Act gives a married woman a right to enjoy as separate property any earnings or wages she may acquire, it presumably does not interfere with the husband's right to control her actions and conduct. It is submitted, for instance, that a married woman will not be entitled to apply for an injunction against a husband who refuses to permit her to establish a separate business or employment. The Act could scarcely be construed as to so revolutionise the marriage status. An injunction prevent-

Husband's  
marital  
control not  
affected.

Act, 1882, ing the interference of the husband with a separate business actually being carried on by the wife, such as was ss. 2, 3. granted in *Wood v. W.* (19 W. R. 1049), evidently rests on different grounds (and see *Green v. G.*, 5 Hare, 400 n.).

Husband has no power over choses in action.

Since the word "property" includes choses in action (sect. 24) the language of both this section and sect. 5 puts an end to the power of a husband to make his wife's choses in action his own by reduction into possession; thus an extensive class of cases of no little intricacy becomes practically obsolete, and it has accordingly not been deemed necessary to refer thereto.

Loans by wife to husband.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

Advantage of interposing trustees.

This section proceeds on a principle analogous to that which prevents a partner, or person lending to a partnership within the provisions of 28 & 29 Vict. c. 86, from proving in competition with general creditors against the estate of any other partner. The effect of this rule will apparently be to place a married woman whose separate property is vested in trustees, in a more favourable position than one who holds her separate property without such intervention. In the former case her trustees would, in case of their having lent the trust money to the husband, be entitled to prove *pari passu* with other creditors; while in the latter the claim of the wife would be postponed until the satisfaction of their claims, her money being liable along with other assets of the husband to his debts. It is to be observed that the section applies only in the case of *bankruptcy*, making no mention of cases of *liquidation* by arrangement; and further that the section includes loans for private as well as for trading purposes.

Questions will probably arise as to whether the rule laid down in this section will apply in the administration of intestate estates. It has been held in equity that a widow who lent money out of her separate estate to her husband, might prove in the administration of his estate *pari passu* with other creditors (*Woodward v. W.*, 3 De G. J. & S. 672). The present enactment declares that such shall not be the case in bankruptcy. But then by sect. 10 of the Judicature Act, 1875 (38 & 39 Vict. c. 77), it is provided that in the administration of insolvent estates the rules of bankruptcy shall apply. It appears, therefore, that by the combined action of the two statutes, the rule laid down in the above case will no longer apply.

In case a husband fraudulently converts his wife's separate property to his own use, and retains it *without her consent or subsequent ratification*, her remedy will doubtless not be affected by this section, but after the analogy of the partnership cases, she will in such circumstances be entitled to rank with other creditors (see *Ex parte Harris*, 2 V. & B. 210, 214; 1 Rose, 437; *Lacey v. Hill*, 4 Ch. D. 537; *Read v. Bailey*, 3 App. C. 94).

And where such a loan is covered by security, it is submitted that the effect thereof will not be prejudiced (see *Ex parte Sheil*, 4 Ch. D. 366).

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act.

We have seen that it was decided in *Godfrey v. Harben* (13 Ch. D. 216) that where property was settled on a married woman for her separate use for life, with remainder to such persons as she should by will appoint, she having made a testamentary appointment the property was liable to her debts. What was there decided as regards equitable separate estate is by sect. 4 declared to be the law as regards statutory separate property. It has only to be observed, firstly, that the section only applies to *general* powers; secondly, that it has no opera-

Act, 1882,  
ss. 3, 4

Applicable  
to adminis-  
tration  
semble.

Fraud by  
husband  
not within  
the section.

Secured  
debt un-  
affected.

Execution  
of general  
power.

*Godfrey v.*  
*Harben*  
confirmed.



Act, 1882, ss. 4, 5. tion unless the power has been actually exercised. Thus, in cases in which the power has not been exercised, the law remains unaffected. It has already been summarised at p. 26.

Property acquired after the Act by a woman married before the Act to be held by her as a *feme sole*.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

By common law, as we have seen, property vesting in a married woman after marriage passed either absolutely or conditionally or partially (according to his character) to her husband. Equity modified the harshness of this by the recognition of a principle known as the wife's equity to a settlement. It will here be desirable briefly to consider the character and extent of this relief.

#### 1.—*The Wife's Equity to a Settlement.*

Origin and development of the doctrine.

Originating in the familiar maxim that "he who seeks equity must do equity," it was at first only applied in cases in which it was necessary for the husband to seek the assistance of a chancery court in order to obtain possession of property accruing to him in right of his wife. But in the leading case of *Elibank v. Montolieu* (5 Ves. 737 ; 1 W. & T. L. C. 464) it was decided that a wife was entitled to assert her right as a plaintiff without the necessity of waiting until the husband might need the aid of the Court.

It will suffice briefly to state the leading features of the principle, the importance of which has by recent legislation been reduced to a minimum.

Three important principles have always to be observed in considering the application of this doctrine:—

Equity only Firstly, the equity to a settlement does not attach on

what the wife takes in her own right, but upon what Act, 1882, s. 5.  
the husband takes in right of his wife.

Thus, if real property descends upon a married woman as tenant in tail or in fee, the doctrine does not apply, since even at law the husband has no claim thereto in the right of the wife (*Life Assoc. of Scotland v. Siddal*, 3 De G. F. & J. 271). attaches to what husband takes in his wife's right;

Secondly, the equity to a settlement attaches not on the property itself, but on the right to receive it. not on the property, but on the right to receive it.

Thus, it only arises on the husband's legal right to present possession, and no settlement can be claimed out of a reversionary interest (*Osborn v. Morgan*, 9 Ha. 434).

Thirdly, though the right to assert or to waive the equity to a settlement rests solely with the wife, if she assert it she must do so on behalf of her children as well as herself. Her equity and that of her children are one, and if asserted must be asserted for their common benefit (*Johnson v. J.*, 1 J. & W. 472, 479). It necessarily includes the children.

From the nature of the case, it is evident that the principle as a rule only relates to equitable estates and interests. But if the property though legal in its nature becomes from collateral circumstances the subject of a suit in equity, it has been decided that the equity attaches (*Sturgis v. Champneys*, 5 My. & Cr. 97; *Wortham v. Pemberton*, 1 De G. & S. 644). Most usually, however, the right is asserted with respect to equitable choses in action (*Burdon v. Dean*, 2 Ves. Jr. 607); though it is equally applicable to equitable leaseholds (*Hanson v. Keating*, 4 Ha. 1).

Where the interest of a married woman is for life only, it depends on circumstances whether she may claim a settlement thereout. It is clear that if the husband has deserted his wife, or if he fails through insolvency to provide for her, equity will settle the fund on her as against her husband, and also as against any one claiming under him by virtue of an assignment for value made subsequently to the desertion or bankruptcy (*Sturgis v. Champneys*, *supra*; *Wright v. Morley*, 11 Ves. 12; *Elliott v. Cordell*, 5 Mad. 149); and, therefore, *à fortiori* as against his trustee in bankruptcy (*Lumb v. Milnes*, 5 Ves. 517). It is also clear that if the husband is living with and maintaining his wife, she cannot claim a settlement out of a life interest against a particular Life interest rests when subject to the equity.

**Act, 1882,** assignee for value of her husband (*Tidd v. Lister*, 3 De G. M. & G. 857, 869); and if such an assignment has been made it cannot be disturbed by any subsequent misconduct of the husband in not maintaining her (*Ibid.* 870; *Re Carr's Trusts*, 12 Eq. 609). The question remains whether she can claim her equity as against the husband himself, *while he lives with and maintains her*. It appears both from principle and authority that she cannot (*De la Garde v. Lemprière*, 6 Beav. 344; *Vaughan v. Buck*, 13 Sim. 404; *Tidd v. Lister*, *supra*). The head-note in *Taunton v. Morris* (8 Ch. D. 453; 11 *ibid.* 779) seems to state the contrary, but it will be observed that in that case the husband was a bankrupt, so that it does not in fact apply to the present proposition.

How the equity is barred or lost.

There are various ways in which the equity to a settlement may be barred: it must here suffice to enumerate the most important of them. Thus the right is lost by the reduction of the fund into possession by the husband (*Milner v. Colmer*, 2 P. Wms. 639, 641); it is barred if an adequate settlement has already been made on her by her husband (*Re Erskine's Trusts*, 1 K. & J. 302), or even out of her own property (*Giacometti v. Prodyers*, 8 Ch. 338); it is lost by the alienation of the fund by the wife, or by her fraud; *e.g.* her concealing the fact of her marriage from a purchaser (*Re Lush's Trusts*, 4 Ch. 591); and, it seems, by her adultery (*Carr v. Eastabrook*, 4 Ves. 146); unless at least her husband be also living in adultery (*Greedy v. Lavender*, 13 Beav. 62), or the wife is a ward of Court who has married without its consent (*Ball v. Coutts*, 1 V. & B. 292, 302, 304); and see also *Ball v. Montgomery* (2 Ves. Jr. 191).

Amount of settlement.

The amount of the settlement depends on circumstances, and is wholly in the discretion of the Court. As long as the husband maintains his wife, his legal claim to the income is not usually interfered with (*Sleech v. Thorrington*, 2 Ves. Sr. 561; *Atcheson v. A.*, 11 Beav. 485). But in case of his desertion of her, or of his bankruptcy, the Court has sometimes settled the whole of the income on the wife (*Gilchrist v. Cator*, 1 De G. & Sm. 188; *Taunton v. Morris*, *supra*). It will take into consideration the fact of an existing settlement, and it has sometimes entirely refused its relief as against the husband's creditors (*Aguilar v. A.*, 5 Madd. 414). As to capital, in the absence of special circumstances the rule is

to settle one half on the wife and children (*Jewson v. Act, 1882*, *Moulson*, 2 Atk. 417, 423); but the amount of the fund, the circumstances of the wife, and the conduct of the husband, are matters which may materially affect the decision (see *Gardner v. Marshall*, 14 Sim. 575; *Francis v. Brooking*, 19 Beav. 347; *Dunkley v. D.*, 2 De G. M. & G. 390; *Re Kincaid's Trusts*, 1 Drew. 326). As to the form and limitations of the settlement, see *Spirett v. Willows* (4 Ch. 407).

Having already considered at sufficient length the provisions of the Acts, Divorce Acts, and that of 1870 as to separate estate acquired during coverture by married women, we need but formally refer to them here, in compliance with our general plan and for uniformity's sake. See pp. 15—21.

s. 5.  
—  
Statutory relief before 1882.

## 2.—*The effect of the present Act.*

Section 2 applies the principle laid down in sect. 1 to the case of a woman married after the commencement of the Act; sect. 5 does the same as regards women married before that period. It has no retrospective effect so as to interfere with the marital rights of a husband already accrued; on the other hand, it does not, as is the case with sects. 7 and 8 of the Act of 1870, save the rights of husbands already married, respecting property henceforth accruing to the wife. The Act of 1870 doubtless proceeded on the principle that a man may be supposed to have married on the footing of the existing law, which was in a sense incorporated in, and formed part of the contract of marriage. The present statute recognises no such principle; and from the 1st of January, 1883, property of whatever nature or interest, and in whatever manner accruing to a married woman will be held by her as legal separate property. The effect is to render her assertion of her equity to a settlement henceforth unnecessary in respect of any property vesting in her after the 1st of January, 1883. As, however, to reversionary interests already vested, but not in possession, it will be still necessary, for a woman married before the 1st of January, 1883, to assert her claim to a settlement in equity if she desires to displace the operation of her husband's marital right.

Act of 1870 contrasted.  
Equity to a settlement, when still applicable]

Act, 1882,    Having already, under the headings of sects. 1 and 2  
ss. 5, 6.    dealt with the general questions relating to the acquisition and enjoyment of separate property, there is no necessity for a further consideration thereof here.

As to  
 stock, &c.,  
 to which  
 a married  
 woman is  
 entitled.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married woman, and all shares, stocks, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorise and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster-General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, and the Governor and Company of the Bank of Ireland, and all directors, managers and trustees of every such bank,

corporation, company, public body, or society as aforesaid, in respect thereof. Act, 1882,  
ss. 6, 7, 8.

7. All sums forming part of the public stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which, so far as any liability may be incident thereto, her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not. As to  
stock, &c.,  
to be  
trans-  
ferred, &c.,  
to a  
married  
woman.

Provided always, that nothing in this Act shall require or authorise any corporation or joint-stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, bye-law, articles of association, or deed of settlement regulating such corporation or company.

8. All the provisions herein contained as to deposits in any post office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt, or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England, or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which after that time shall be allotted to, Invest-  
ments in  
joint names  
of married  
women and  
others.

**Act, 1882,** placed, registered, or transferred to or into, or made  
**ss. 8, 9.** to stand in the sole name of a married woman, shall  
 respectively extend and apply, so far as relates to  
 the estate, right, title, or interest of the married  
 woman, to any of the particulars aforesaid, which at  
 the commencement of this Act, or at any time after-  
 wards, shall be standing in, or shall be allotted to,  
 placed, registered, or transferred to or into, or made  
 to stand in the name of any married woman, jointly  
 with any persons or person other than her husband.

As to  
 stock, &c.,  
 standing in  
 the joint  
 names of  
 married  
 women and  
 others.

9. It shall not be necessary for the husband of  
 any married woman, in respect of her interest, to  
 join in the transfer of any such annuity or deposit as  
 aforesaid, or any sum forming part of the public  
 stocks or funds or of any other stocks or funds  
 transferable as aforesaid, or any share, stock, debenture,  
 debenture stock, or other benefit, right, claim,  
 or other interest of or in any such corporation, company,  
 public body, or society as aforesaid, which is  
 now, or shall at any time hereafter be standing in the  
 sole name of any married woman, or in the joint  
 names of such married woman and any other person  
 or persons not being her husband.

#### 1.—*Investments under the Act of 1870.*

By sect. 2 of the Act of 1870, married women were  
 enabled to invest their separate property in savings' banks  
 and government annuities; by sect. 3 in the public funds;  
 by sect. 4 in shares and debentures to which no liability  
 attached in any incorporated or joint-stock company; and  
 by sect. 5 in similar shares in friendly and benefit  
 societies; and in all such cases such investments when  
 made in the name of a married woman were to be deemed  
 her separate property: Provided, however, that if any  
 such investments were made by the married woman by  
 means of moneys of her husband without his consent, the  
 Court might, upon an application under sect. 9 of the  
 Act, order such investment and the proceeds thereof, to  
 be transferred and paid to the husband. And by sect. 6  
 the rights of the husband's creditors were reserved against

any moneys of his fraudulently deposited or invested in **Act, 1882,**  
his wife's name (Appendix, p. 84). **ss. 6, 7, 8,**  
**9.**

2.—*Investments under the Act of 1882.*

Section 6 regulates the application of the principle of the Act to the case of all deposits in post office and other savings' banks, annuities, and sums forming part of the public stocks or funds, which on the 1st of January 1883 are standing in the name of a married woman; and sect. 7 has similar application to the like investments allotted or transferred to a married woman after that date; and their effect is to complete the reform initiated by the corresponding sects. (ss. 2—5) of the Act of 1870.

They extend the Act of 1870 in the following respects: **Shares not**

(1) By including shares &c., to which liability to further **fully paid**  
payment is incident. As regards equitable separate estate, **up.**  
indeed, even before the Act of 1870, there was nothing to prevent married women from contracting in equity to take and hold stock and shares of any description; and they might be made contributories to the extent of their separate estate in respect thereof (*Mattheuman's Case*, 3 Eq. 781; *Butler v. Cumpston*, 7 *ibid.* 16). But the special powers conferred by that Act contemplated only *fully paid-up* shares. The present statute makes no such limitation.

(2.) The Act of 1870 applied only, as regards invest- **£20 limit**  
ments in the public stocks and funds, to sums not being **no longer**  
less than £20. The present statute dispenses with this **applies.**  
restriction.

(3.) With respect to shares in joint-stock Companies, **Contracts**  
the Act of 1870 only provided, in terms at least, for the **to take**  
registration of shares to which a married woman was **shares.**  
entitled, not to shares which she was about to acquire. The present statute gives the same validity to the contracts of married women as to those of *femes sole*, including, of course, contracts to take shares; and their rights as to registration are accordingly complete: subject to the express proviso saving the operation of any Act of Parliament, charter, bye-law, articles of association, or deed of settlement, regulating the corporation or company in question.

(4.) Sections 3 and 4 of the Act of 1870 were imperative, and on an application thereunder, no flaw appearing in



Act, 1882, the title to the shares, a company was compelled by ss. 6, 7, 8, *mandamus* to register (*Reg. v. Carnatic R. Co.*, 8 L. R. Q. B. 299).

9.

The present statute (subject to the proviso above referred to) establishes the same right, and expressly empowers a married woman to indemnify the governors and managers of banks, companies, &c., in respect of all transfers of and payments of dividends to married women, made without the concurrence of their husbands. The *prima facie* separate property of a married woman in all investments standing in her name is thus carried to all its consequences.

Trust  
property  
included.

(5.) Under sect. 3 of the Act of 1870 it was doubted whether trust property was included (*Howard v. B. of England*, 19 Eq. 299). This difficulty is removed by the present Act, which expressly enables her to act as executrix, administratrix, or trustee without her husband, as a *feme sole* (s. 18). In the same case it was also held that the Act of 1870 did not apply unless and until the stock in question had been placed in the sole name of the married woman for her separate use; and the Court refused to compel the Bank to transfer a sum of consols standing in the name of a married woman jointly with two other persons, without the concurrence of the husband. This difficulty is met by ss. 8, 9 & 18 of the present Act, which provide in the case of investments in the name of a married woman jointly with any person other than her husband, that the provisions of the previous sections shall extend and apply so far as relates to the estate, right, title, or interest of the married woman, and that it shall not be necessary for the husband to join in the transfer of such investments.

Additional  
invest-  
ments.

(6.) The powers of investment under this Act further exceed those of the Act of 1870 by including deposit in any banks (not saving banks only), annuities granted by any person (not government annuities only); and to shares, &c. in any corporation or public body municipal or otherwise.

The exclusion from the operation of ss. 8 & 9 of cases in which stocks, &c. stand invested in the joint names of a husband and wife, if standing alone would seem to carry this further important consequence, that in such cases there would be no presumption that the wife had a separate interest, so as to authorise or empower her to receive and transfer the same and to receive the dividends,

interests, and profits thereof without her husband's concurrence; or so as to make her separate estate *prima facie* liable in respect thereof. If this were so, the husband's marital right and liability would remain apparently as before, and he might dispose of the property or receive the income thereof on proof of his marriage (see 26 & 27 Vict. c. 87, s. 31). It is, however, presumed that this effect will be held to be avoided by the operation of ss. 1 and 2, which apply to all real and personal property, therefore including property belonging to a wife as joint-tenant.

Act, 1882,  
ss 9, 10.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband to any gift by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

Fraudulent  
invest-  
ments with  
money of  
husband.

This section, which corresponds with the latter clauses of ss. 2—5 of the Act of 1870, provides (by reference to s. 17) a summary remedy for the husband in case of an investment by his wife of his moneys without his consent. It also provides for the case of a fraudulent gift from a

Fraud of  
wife on  
husband,

Act, 1882, husband to his wife, or investment of property in her  
 s. 10. name. The rights of creditors are preserved against any  
 and of such investments, and against any gift which continues to  
 husband on be in the order or disposition or reputed ownership of the  
 creditors. husband.

Existing protection continue. As regards the former of these provisions it is only to  
 be observed that the presumption is in favour of the wife,  
 the burden of proof accordingly on the husband. As  
 regards the latter, it is clear that the express enactment  
 herein contained as to creditors' rights against the subject  
 matter of any gift remaining in the order and disposition  
 or reputed ownership of the husband does not displace,  
 but is rather added to, the existing protection of creditors  
 against fraudulent settlements. Thus apart altogether  
 from any question of order and disposition or reputed owner-  
 ship, a voluntary gift or settlement made in circumstances  
 of insolvency will still be fraudulent and void under 13  
 Eliz. c. 5, and the rules in the well-known cases of *Holmes v.*  
*Penny* (3 K. & J. 90) and *Freeman v. Pope* (5 Ch. 538), as  
 to what constitutes fraud, will remain good. Similarly  
 also, nothing in this Act will interfere with cases coming  
 within s. 91 of the Bankruptcy Act, 1869.

Order and disposition. There will apparently be often much difficulty in de-  
 ciding questions of order and disposition in cases between  
 a husband and wife on one hand and creditors on the  
 other. Thus, it has been hitherto held that sole posses-  
 sion has been requisite to reputed ownership, possession  
 jointly with a partner not being sufficient (*Reynolds v.*  
*Bowley*, 2 L. R. Q. B. 474); and as regards possession  
 by a husband and wife, it has been held that joint  
 possession by husband and wife, of property settled to  
 the wife's separate use, if consistent with the settlement,  
 does not come within the meaning of reputed ownership  
 (*Cadogan v. Kennett*, Cowp. 432; *Simmons v. Edwards*,  
 16 M. & W. 838; *Ex parte Cox*, 1 Ch. D. 302). *Secus*  
 where the possession of the husband was not in accord-  
 ance with the deed (*Darby v. Smith*, 8 T. R. 82; *Ex*  
*parte Symmons*, 14 Ch. D. 693). Now that husband  
 and wife are to some extent at least regarded as partners,  
 on an equal footing, it will be difficult to reconcile these  
 cases with the efficiency of the section before us; and at  
 least where a husband and wife are living together the  
 difficulty of proof as to apparent possession, &c., must be  
 great.

Following the analogy of cases under 13 Eliz. c. 5, and **Act, 1882,** 27 Eliz. c. 4, it may be concluded that gifts fraudulent **ss. 10, 11.** as against creditors will still be valid against, and irre-  
coverable by the donor himself or other volunteers claim-  
ing under him (*Smith v. Garland*, 2 Mer. 123 ; *Daking v. Whimper*, 26 Beav. 568). Gifts  
binding on  
donor.

11. A married woman may, by virtue of the power **Moneys** of making contracts herein-before contained, effect **payable** a policy upon her own life or the life of her husband **under** for her separate use ; and the same and all benefit **policy of** thereof shall enure accordingly. **assurance**

A policy of assurance effected by any man on his **not to** own life, and expressed to be for the benefit of his **form part** wife, or of his children, or of his wife and children, **of estate** or any of them, or by any woman on her own life, **of the** and expressed to be for the benefit of her husband, **insured.** or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts : Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death

Act, 1882, of the insured, or at any time afterwards, there shall  
 s. 11. be no trustee, or it shall be expedient to appoint a  
 new trustee, or new trustees, a trustee or trustees  
 or a new trustee or new trustees may be appointed  
 by any court having jurisdiction under the provisions  
 13 & 14 of the Trustee Act, 1850, or the Acts amending and  
 Vict. c. 60. extending the same. The receipt of a trustee or  
 trustees duly appointed, or in default of any such  
 appointment, or in default of notice to the insurance  
 office, the receipt of the legal personal representa-  
 tive of the insured shall be a discharge to the office  
 for the sum secured by the policy, or for the value  
 thereof, in whole or in part.

Act of 1870 This section is an amplification of sect. 10 of the Act  
 compared. of 1870, and differs therefrom in the following respects.  
 (1.) It does not require a policy of insurance effected by  
 a married woman to express on the face thereof that it  
 is effected for her separate use. This being by sect. 1  
 sub-s. 3 the presumption in future as to all married  
 women's contracts, the necessity of such expression has  
 disappeared. (2.) It makes similar provision for a policy  
 effected by a woman for the benefit of her husband and  
 children, as for one effected by a man for the benefit of  
 his wife and children; and the subsequent provisions of  
 the section apply equally to both. (3.) Sect. 10 of the  
 Act of 1870 only provided for the appointment of  
 trustees of the policy moneys by the Court of Chancery  
 or local Court in accordance with the circumstances of  
 the case; the present section enables the insured by the  
 policy or any memorandum under his or her hand to  
 appoint trustees, and make provision for the appointment  
 of new trustees and for the investment of the moneys.  
 (4.) The present Act adds the provision that in default  
 of the appointment of trustees, or in default of notice  
 to the insurance office, the receipt of the legal personal  
 representative of the insured shall be a discharge to the  
 office (Appendix, p. 87).

Cases Certain decisions under the former Act still remain in-  
 under Act structive and applicable. In *Holt v. Everall* (2 Ch. D.  
 of 1870 266) a husband had, before the passing of the Act of  
 still applic- 1870, insured his life and paid one premium; after the  
 able.

passing of the Act he gave up the policy and received another at the same premium, for a sum payable to the separate use of his wife, if she survived him. The second policy was held to have been effected under the Act. In *Re Mellor's Policy Trusts* (6 Ch. D. 127), on a petition for appointing a trustee in accordance with the Act, the Court declared the rights and interests of the children in the moneys, and ordered the fund to be settled upon the usual settlement trusts.

It is to be further observed that a policy once being effected by a husband or wife for the benefit of the wife or husband and the children or any of them, remains inalienable and not chargeable with the debts of the insurer. It creates a trust in favour of the objects named, which cannot be discharged as long as any object of the trust remains unperformed. The Act of 1870 did not contain the word "unperformed." The addition of this word makes clearer what was previously presumable, namely that a trust declared in favour of children continues in force, not only as long as there are children in existence, but as long as there is possibility of issue of the marriage.

The express mention of the Trustee Act 1850 as the means for the appointment of a new trustee if and when required, will not, it is submitted, exclude the operation of s. 31 of the Conveyancing Act 1881, in cases to which it would otherwise apply. But it will certainly authorise an application to the Court in any case (see *Re Gibbon's Trusts*, W. N. 1882, p. 12).

If a wife effects a policy and pays the premiums thereof out of her husband's moneys without his consent, he will probably have a lien on the policy moneys for such premiums (see *Norris v. Caledonian Ins. Co.*, 8 Eq. 127).

It will be seen that the Act makes no provision for the insurance of, by a wife, her husband's life for his benefit or that of her children; nor for the insurance of the wife's life by the husband. Such cases, therefore, remain as before the statute, and regulated by the restrictions imposed by 14 Geo. III. c. 48.

The provision respecting notice to the insurance office has the effect of raising in favour of such office, in the absence of notice to the contrary, a presumption that the legal personal representative of the insured is entitled to

Act, 1882,  
s. 11.

Policy  
under the  
Act in-  
alienable.

44 & 45  
Vict. c. 41.

Lien on  
policy  
moneys.

Insurances  
not within  
the Act.

Effect of  
notice.

Act, 1882, ss. 11, 12. the sum secured by the policy. When trustees are appointed, it is therefore necessary to give notice to insurance office, to avoid the contingency of the moneys being validly paid to the legal personal representative, and thus falling among the assets of the deceased. Should such payment be made without notice, the office would be discharged, but the principle by which trust moneys may be followed as far as they can be identified would doubtless still apply to the fund (*Mansell v. M.*, 2 P. Wms. 678, Lewin, p. 728, 7th ed.).

Remedies  
of married  
woman  
for protec-  
tion and  
security of  
separate  
property.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso herein-after contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section, it shall be sufficient to allege such property to be her property: and in any proceeding under this section, a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning any property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert his wife.

We have already under the suggestion of sect. 1 dealt generally with the civil remedies conferred on married women by the Act. In this place it is therefore only

necessary to comment on some of the particular provisions Act, 1862, of this section. s. 12.

(1.) As to civil actions between husband and wife, the wife's right to sue for torts, is confined to torts affecting her separate property. And apparently a husband can also sue the wife for a tort, affecting his property, though the wording of the section is by no means unambiguous in this respect. It may be well to note that libel or slander on her trade would now seemingly be a ground of action by a married woman, even as against her husband (see remarks of Brett, L.J., in *Summers v. City Bank*, 9 L. R. C. P. 580, 584; *Ramsden v. Brearley*, 10 L. R. Q. B. 147); and a libel of this nature is now ground in equity for an injunction (*Thorley's Cattle Food Co. v. Massam*, 14 Ch. D. 763; *Quartz Hill &c. Co. v. Beall*, 20 Ch. D. 501).

Wife's suit against husband in tort confined to protection of separate property.

As regards evidence in civil actions, the present section appears to add nothing not already provided for by 16 & 17 Vict. c. 83, s. 1. By sect. 3 of that Act no husband or wife is compellable to disclose any communication made by the other during the marriage. It is questionable whether the effect of the present Act is to abolish this privilege. Seeing that in the Act referred to such communications were protected while the general right of giving evidence was provided, the better opinion seems to be that they remain unaffected by the present Act.

Quere as to discovery of communication made during coverture.

(2.) As to criminal proceedings between husband and wife, sect. 16 must be referred to along with the one now before us. By the common law a married woman could not commit theft upon things belonging to her husband, nor *à fortiori* a husband upon things belonging to his wife. And a wife or husband was not competent or compellable to give evidence for or against the other in any criminal proceedings, except in cases of bodily injury or violence. The Act of 1870 provided that a married woman might in her own name take criminal proceedings for the protection of her separate property; but though its words were perhaps wide enough to include her husband in such proceedings, no amendment of the law of evidence was introduced enabling her to give testimony against him. There was no power given in that Act corresponding to sect. 16 of the present one, by which a husband may proceed criminally against his wife.

Criminal proceedings, new law as to evidence.

The amendment of the law of evidence now effected,



Act, 1882, was clearly necessary to give efficacy to criminal proceedings in such cases. At the same time, forcible restrictions

Restrictions on criminal proceedings.

are put upon the use of this remedy; it is only applicable as between a husband and wife living apart, that is apart *in fact*, judicial separation being clearly not necessary: nor does it apply as to any act done while they were living together; provided that if a husband wrongfully takes property of his wife with the intention of leaving or deserting her, a prosecution will lie; and similarly, by virtue of sect. 16 if a wife wrongfully takes her husband's property with the intention of leaving or deserting him. Difficulties may well arise, under the latter clause of the section. An *animus furandi* must, of course, be proved; to some extent this would be inferrible from the fact of desertion, but at least an intention to desert must be shown. It is difficult to suggest any effective distinction of meaning between the words "leave" and "desert" such as to necessitate the employment of both. A mere temporary absence would not, apparently come within either of the terms.

Wife's ante-nuptial debts and liabilities.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to Joint Stock Companies: and she may sue and be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman

married before the commencement of this Act for Act, 1882,  
ss. 13, 14.  
any such debt, contract, or wrong as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made to him, and any sums for which judgment may have been bonâ fide recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid.

Husband to be liable to his wife's debts contracted before marriage to a certain extent.

Since nothing in the present Act is to "operate to increase or diminish the liability of any woman married before the commencement" thereof for any such debt (with the exception presently noticed); and since sect. 12 of the Act of 1870 and the Act of 1874 applied only to women married after the dates thereof respectively, it follows that, before we can estimate the liabilities of a married woman in respect of her ante-nuptial debts, we must enquire as to the date of the marriage. The

Liabilities before the Act unaffected.

Act, 1882, same applies as to the liability of her husband, and ss. 13, 14. it will be convenient for many reasons to deal with sects. 13 and 14 together. We shall thus have before us the whole question of liability for ante-nuptial debts. Distinguishing, then, between the different periods marked out by the several statutes, we shall enquire under each, first as to the liability of the woman; secondly, as to that of her husband.

The effect of the Divorce Acts in the particular cases to which they apply have been already stated, and need not, therefore, in the present enquiry, be again considered.

1.—*The Ante-nuptial Liabilities of Women Married before August 9th, 1870.*

As to  
common  
law.

**1. As to the Wife's Liability.**—In the absence of statutory modifications, we must, of course, revert to the doctrines of common law. By these, as we have observed, the effect of the marriage was to vest all the woman's property in possession in her husband, and to release her from all liability in respect of debts whether arising from contract or tort.

Except  
as to  
separate  
property  
acquired  
by this  
Act.

But notwithstanding that this immunity is generally preserved by sect. 13 of the present Act, it is thereby provided that it shall not extend to any separate property to which the woman may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts of 1870 and 1874, or otherwise, if this Act had not been passed. Property, therefore, which becomes her separate property by virtue of this Act alone, will be liable to her ante-nuptial debts, whenever she was married.

What  
comprised  
in the  
exception.

Such property includes sums of money exceeding £200, leaseholds, stocks, shares, &c., coming to a woman by deed or will during the coverture, and not limited to her separate use, either in the instrument through which she acquires them, or by virtue of any settlement (see sect. 7 of the Act of 1870; and p. 21, *supra*). It may be here observed that where more than one legacy, or a legacy and share of residue severally within, but in the aggregate exceeding, the amount of £200, are bequeathed by the same will, the benefit of sect. 7 of the Act of 1870 could be claimed in respect of

each amount (*Re Middleton's Will*, 16 W. R. 1107); and **Act, 1882**, the same principle seemingly would apply to gifts by **ss. 13, 14**, deed (*Bower v. Smith*, 11 Eq. 279).

**2. As to the Husband's Liability.**—Again referring At common to the common law, we find that the effect of marriage law. was to render him liable in respect of all his wife's ante-nuptial debts, whether arising from contract or tort, and whether or not he received any property in her right. The Act of 1870, as we shall see, removed this liability, and that of 1874 partially revived it, but in the present case neither of these applies; and by sect. 14, the present statute does not operate to diminish it.

Moreover, sect. 78 of the Companies' Act, 1862, enacts **25 & 26** that "if any female contributory marries, either before Vict. c. 89, or after she has been placed on the list of contributories, s. 78. her husband shall, during the continuance of the marriage, be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed a contributory accordingly." It has been held that the settlement of the shares to the woman's separate use made no difference as to the husband's liability under this section (*Re West of England Bank, ex parte Hatcher*, 12 Ch. D. 284). This will, as we shall see, no longer be the case as to women married after January 1st, 1883, but it will still apply to the case before us.

**2.—Ante-nuptial Liabilities of Women Married between August 9th, 1870, and July 30th, 1874.**

**1. As to the Wife's Liability.**—By sect. 12 of the Act of Act of 1870, it is provided that a wife shall be liable to 1870, s be sued for, and any property belonging to her for her 12. separate use shall be liable to satisfy her debts contracted before marriage, as if she had continued unmarried. It has been decided under this section that a restraint on anticipation is no protection to separate property in respect to ante-nuptial debts (*Sanger v. Sanger*, 11 Eq. 470; *London and Prov. Bank v. Bogle*, 7 Ch. D. 773). Beyond this, the immunity of a woman married within the time mentioned remains as before. If, therefore, on her marriage, no property has been reserved for her separate use, and none has happened to be acquired by her during

**Act, 1882,** the coverture by virtue of the Act of 1870, there continued ss. 13, 14, to be no remedy against her in respect of her ante-nuptial debts.

Contract and torts unaffected thereby.

Again, the words of the section make no reference to claims arising from breaches of contract and tort, but only to debts contracted. From such liabilities therefore she is free.

Exception as to property acquired under Act of 1882.

But in this case, as in that of women married prior to the 9th of August, 1870, the present Act excepts from immunity property which becomes her separate property by virtue of the present Act *alone* (see p. 62). To the extent of such, therefore, she is liable for all debts, contracts, torts, and sums due from her as a contributory prior to her marriage.

Act of 1870, s. 12.

**2. As to the Husband's Liability.**—Sect. 12 of the Act of 1870 enacts that a husband shall not, by reason of any marriage which shall take place after that Act be liable for the debts of his wife contracted before marriage.

Doubtful remedy in equity.

We have seen that by the same section the wife is only liable to the same debts to the extent of her separate property (if any). Consequently in the absence of such property, the effect of the statute is to leave no remedy to the creditor. It might, however, be argued on equitable principles that if the marriage could clearly be shown to have taken place with intent to defraud creditors, a remedy would lie against the husband to the extent of the property he received on the marriage by marital right. Proceeding on the analogy of *Colombine v. Penhall* (1 Sm. & G. 228), and *Bulmer v. Hunter* (8 Eq. 46), in which settlements of a husband's property made in consideration of marriage but with clear intent to defraud creditors were set aside, such a case might perhaps be sustained; and under the Judicature Acts, if sustainable in equity, they would be equally so in courts of law. It is, however, doubtful whether such a contention would succeed in the face of the express words of the statute.

Liability for torts and breaches of contract continued. And as contributory.

It will be observed that the Act of 1870, s. 12, makes no reference to, and therefore no difference as to a husband's liability for the ante-nuptial torts or breaches of contract of his wife. His liability in respect of such, therefore, remained.

Again his liability as a contributory under s. 78 of the

Companies' Act above quoted, remained as decided in *Ex Act, 1882.*  
*parte Hatcher* (12 Ch. D. 284). ss. 13, 14.

3.—*Ante-nuptial Liabilities of Women Married between July 30th, 1874, and January 1st, 1883.*

**1. As to the Wife's Liability.**—The Act of 1874 having made no difference in this respect, nothing remains to be added to what was said under the last heading.

**2. As to the Husband's Liability.**—The Act of 1874 first repeals so much of sect. 12 of the Act of 1870 1874, s. 1.  
as enacts that a husband shall not be liable for the debts of his wife contracted before marriage, so far as respects marriages taking place after July 30th, 1874, and enacts that a husband and wife married after that date may jointly be sued for any such debt.

Section 2 of the same statute enacts that "the husband s. 2.  
shall in such action and in any action brought for damages sustained by reason of any tort committed by the wife before marriage, be liable for the debt or damages respectively to the extent only of the assets hereinafter specified; and in addition to any other plea or pleas may plead that he is not liable to pay the debt or damages in respect of any such assets as hereinafter specified, or confessing his liability to some amount, that he is not liable beyond what he so confesses; and if no such plea is pleaded the husband shall be deemed to have confessed his liability so far as the assets are concerned."

It is observable with reference to this section that it Includes  
makes express mention of the torts and breaches of con- torts and  
tract committed by the wife before marriage, which were breaches of  
not mentioned in sect. 12 of the Act of 1870. contract.

The common law liability in respect of such is now, therefore, as regards the period in question, replaced by the statutory liability herein provided.

By sect. 3. "If it is not found in such action that the s. 3.  
husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife."

By sect. 4. "When a husband and wife are sued jointly, s. 4.  
if by confession or otherwise, it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for

Act, 1882, which the husband is liable shall be a joint judgment ss. 13, 14, against the husband and wife, and, as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife."

a. 5.

Section 5 specifies the assets in respect of and to the extent of which the husband shall in any such action be liable, as follows:—

(1.) "The value of the personal estate in possession of the wife which shall have vested in the husband :

(2.) "The value of the choses in action of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession :

(3.) "The value of the chattels real of the wife which shall have vested in the husband and wife :

(4.) "The value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received :

(5.) "The value of the husband's estate or interest in any property, real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person :

(6.) "The value of any property, real or personal, which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors :

"Provided that when the husband after marriage pays any debt of his wife, or has a judgment *bonâ fide* recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable."

Combined  
effect of  
this and  
the Act of  
1882.

It will be seen that the assets here enumerated include as well property vesting in the husband *jure mariti* during the marriage as to that passing to the husband at the marriage. We have already more than once enumerated the species of property so vesting in the husband during coverture under the Act of 1870 (pp. 21 and 62). Under the Act of 1882, however, such property will no longer so vest, and in this respect it is immaterial when the marriage takes place (sects. 2 and 5, *supra*, pp. 39 and 44). Notwithstanding the proviso that nothing in this Act shall operate to increase or diminish the liability of

any husband married before the commencement of this Act, Act, 1882, ss. 13, 14. it is submitted that a husband married within the period now being considered, will not be liable for ante-nuptial debts to the extent of property which would formerly, but will no longer vest in him during coverture *jure mariti*. Such property will be included in the *wife's* liability under sect. 13, which expressly renders liable property to which she may become entitled by virtue of this Act, to which she would not otherwise be entitled, that is, the very property in question.

The effect of the proviso in the Act of 1874, s. 5, is What may be set off. to enable the husband to set off any debts paid by him for which the separate property of the wife was liable (whether such debt was contracted before or after marriage); and also any sum in which judgment has been recovered against him in respect of an ante-nuptial debt, whether satisfied or not. It was decided in *Fear v. Castle* (8 Q. B. D. 380) that the words "subsequent action" occurring at the conclusion of this section, meant any action commenced subsequently to the time of bringing the action in which judgment was recovered. Such judgment, therefore, cannot be set off in an action commenced previously to the one in which the judgment has been recovered.

### 3.—*The Ante-nuptial Liabilities of Women Married after January 1st, 1883.*

**1. As to the Wife's Liability.**—Sect. 13 of the Act of 1882, s. 13. present Act provides for the continued liability of women married after the Act for all debts contracted and all contracts entered into or wrongs committed by them before marriage, to the full extent of their separate property. Liability as a contributory in the winding-up of a joint stock company is expressly mentioned. Notwithstanding that by sect. 19 the effects of a restraint on anticipation are preserved, such restraint will not prevent the liability of the settled property, the decisions in *Sanger v. S.* (11 Eq. 470), and *London and Provincial Bank v. Bogle* (7 Ch. D. 773) being still applicable. Restraint on anticipation ineffective.

**2. As to the Husband's Liability.**—The husband s. 14. is now liable for the debts, breaches of contract, and torts of his wife (including liabilities under the Companies' Acts) only to the extent of property acquired from or



Act, 1882, ss. 13, 14, 15, through his wife. Since the Act provides for the enjoyment by the wife married after this date, of all her property as separate property (sect. 2) her husband can only acquire or become entitled to property from or through

What  
property  
included.

his wife, by gift, settlement, will or, intestate succession ; and the section provides power for the Court, in an action against him, to direct any inquiry or proceedings for the purpose of ascertaining the amount or value of such property. The effect of this limitation of his liability is to render the decision in *Ex parte Hatcher* (12 Ch. D. 284, *supra*, p. 63) no longer applicable.

Set off ;  
Act of  
1874 dis-  
tinguished.

The husband may set off any payments made by him, and any sums for which judgment may have been *bond fide* recovered against him in any proceeding at law in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage. This proviso differs in two respects from the corresponding one in the Act of 1874. First, it in terms applies only to *ante-nuptial* debts, &c., not to *any* debt of the wife. Secondly, by omitting to distinguish between previous and subsequent actions it avoids the recurrence of the difficulty which was raised in *Fear v. Castle* (8 Q. B. D. 380, *supra*, p. 67).

Suits for  
ante-  
nuptial  
liabilities.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them ; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him ; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount

for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only. Act, 1882,  
ss. 15, 16.

This section replaces sects. 3 and 4 of the Act of 1874, and is an explanation of the effect of a joint judgment against the husband and wife. Act of  
1874 com-  
pared.

Under the former Act it was doubtful whether, in case the husband was found liable but had insufficient assets, the joint judgment entitled the creditor to any remedy against the separate estate. In other words it was doubtful whether the "residue" mentioned in sect. 4 was to be ascertained by deducting from the debt the amount for which the husband was found liable, or the amount recovered from him. This doubt is by the present section resolved in favour of the creditor; and notwithstanding that by sects. 13 and 14 liabilities are not to be increased by this statute, the words of sect. 15 would probably be taken as explanatory of sect. 4 of the Act of 1874, so as to lead to their similar construction in the creditors' favour in cases coming within that Act.

It was decided under the Act of 1874 that where the husband recovered his costs against a plaintiff, the plaintiff might add them to his claim on the wife's estate (*London and Provincial Bank v. Bogle*, 7 Ch. D. 773). The principle is still applicable. The proviso as to costs being imperative, it apparently overrides the general discretion of the Court as to costs, given by Order LV. r. 1, of the Rules of the Supreme Court. Husband's  
costs.

**16.** A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to the property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband. Act of wife  
liable to  
criminal  
proceed-  
ings.

This section has been already referred to in connexion with sect. 12, pp. 59, 60, *supra*.

Act, 1882,  
s. 17.

Questions  
between  
husband  
and wife  
as to pro-  
perty to be  
decided in  
a summary  
way.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be: and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of certiorari or otherwise as may be prescribed by any rule of such High Court; but

any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

Act, 1882,  
s. 17.

This section amends and extends the corresponding Act of sect. 9 of the Act of 1870. (Appendix, p. 86.) It differs therefrom in the following respects. 1870 compared.

(1.) The summary remedy given applies to any question as to property between husband and wife. The Act of 1870 was confined to questions concerning property declared by that Act to be the wife's separate property; thus excluding equitable separate estate. Act of 1882 includes all questions as to property.

(2.) It gives the remedy not only to the husband and wife, but also to any bank, corporation, company, public body or society in whose books any stocks, funds, or shares of either party are standing. It may here be observed that the remedy here given is in all cases optional. The common rights of persons or corporations in the position of stakeholders are unaffected. They may thus compel the disputants to interplead under the ordinary conditions; or in the case of *trust funds*, but not otherwise (*Matthew v. Northern Assurance Co.*, 9 Ch. D. 80), may pay the same into Court under the Trustee Relief Act (10 & 11 Vict. c. 96), in which case they are entitled to costs as between solicitor and client (*Re Sutton's Trusts*, 12 Ch. D. 175). Applies to third parties.

(3.) It authorises application to any judge of the High Court of Justice, a change naturally occasioned by the incorporation therein of the Court of Chancery. Application may be to any judge.

(4.) It specifies in greater detail the powers of the judge or chairman of the civil bill Court to whom application is made. New powers given.

(5.) The defendant or respondent may as of right require the removal of the proceedings into the High Court of proceed-

Removal

**Act, 1882,** of Justice in England or Ireland, in all cases in which, ss. 17, 18, by reason of the value of the property in dispute, the County Court or civil bill Court would not have had jurisdiction apart from the Acts.

ing by  
certiorari.

The limit of the equitable jurisdiction of County Courts is fixed by 28 & 29 Vict. c. 99 at £500 ; and it is to this and not the common law limit of £50 that reference is made. Under the Act of 1870, the application being to the Court of Chancery in the alternative, and express mention being made of equitable plaint this was evidently the case ; and this is substantially followed in the present Act. The same limit is fixed for the Civil Bill Court in Ireland by 40 & 41 Vict. c. 56, s. 33.

Hearing *in*  
*camera*.

Under both statutes power is conferred upon the judge to hear a case arising under this section sitting *in camera*, at the request of one party. Apart from such statutory provision, at least the consent of both parties would be necessary (*Andrew v. Raeburn*, 9 Ch. 522), and even with this, such a hearing could only be granted in certain exceptional cases, such as those affecting lunatics or wards of court (*Nagle-Gillman v. Christopher*, 4 Ch. D. 173 ; 46 L. J. Ch. 60).

Fraudulent  
invest-  
ments.

We have seen that sect. 10 renders the remedy provided in this section applicable to cases arising out of investments alleged to have been fraudulently made by a wife with her husband's money, herein following sects. 2—5 of the Act of 1870. In such cases, the Court may order such investment and the dividends thereof, or any part thereof to be transferred or paid respectively to the husband.

Married  
woman as  
an execu-  
trix or  
trustee.

18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that cha-

racter, without her husband, as if she were a feme sole, 1882, s. 18.

By sect. 24 we find that the word "*contract*" in this s. 24 de-Act includes the acceptance of any trust, or the office of fines "con-  
executrix or administratrix, and that the provisions of tract."  
this Act as to all liabilities of married women extend  
to all liabilities by reason of any breach of trust or  
devastavit committed by any woman being a trustee or  
executrix or administratrix either before or after marriage,  
and that her husband shall not be subject to such liabili-  
ties unless he has acted or intermeddled in the trust or  
administration.

Hitherto a married woman has been enabled to accept Former law  
the office of trustee, executrix or administratrix, only as to ad-  
with the consent of her husband; and this for the ministra-  
good reason that her husband thereby became liable for tion and  
any devastavit or breach of trust which she might commit trusts.  
(*Adair v. Shaw*, 1 S. & L. 243). Moreover, a wife could  
not renounce administration to her next of kin without  
his consent (*Da Rosa v. De Pinna*, 2 Cas. t. Lee, 390),  
and if she refused administration, it might be granted  
to her husband (*Haynes v. Matthews*, 1 Sw. & T. 460).  
Conversely, if a married woman accepted the office of  
executrix, and she survived her husband, she was liable  
for a devastavit committed by him (*Soady v. Turnbull*, 1  
Ch. 494; *Adair v. Shaw*, *supra*).

The effect of the present Act is clearly to enable her Husband's  
to accept such offices without consent; in case of her assent not  
holding the office, her husband incurs no liability unless now neces-  
sary.  
he acts or intermeddles therein.

Seeing that for the future, the husband takes no Husband  
interest in the property of his wife's next of kin as such, has no  
there is no longer a reason for investing him with any interest in  
control as to the administration thereof. In respect property of  
therefore of his wife's renunciation, and as to his claim of wife's next  
to administer in case of her refusal, the former rule is of kin.  
apparently changed. And the policy of the Act being to  
effect a severance between the interests and liabilities  
of a husband and wife, it is submitted that the wife will  
no longer be in any event liable for the devastavit of her  
husband.

It is to be noted that sect. 24 makes no direct reserva- Husband's  
tion as to existing liabilities such as is contained in liability for

**Act, 1882, sects. 13 & 14 ; nevertheless, since the word "contract" ss. 18, 19.** in those sections does by virtue of sect. 24, include the acceptance of any trust, &c., it appears that ante-nuptial breaches of trust and devastavit are thereby brought within the scope thereof. If this be so, in questions relating to a husband's liability for a devastavit or breach of trust by his wife, it will be necessary as in other questions of similar nature to distinguish the cases in accordance with the date of the marriage (see pp. 62—68).

devastavit  
and de-  
pends on  
date of  
marriage  
*semble.*

It is scarcely necessary to call attention to the powers and liabilities particularly enumerated in sect. 18, which speaks for itself. Reference to sects. 1, and 6—9 will supply sufficient comments as to the extent of the Act in these respects.

Saving of  
existing  
settle-  
ments,  
and the  
power to  
make  
future  
settle-  
ments.

**19.** Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument ; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

Doctrines  
of equity  
preserved.

By virtue of this section, the general characteristics of equitable separate estate, and of the restraint on anticipation which may be made incident thereto, are preserved. The doctrines of equity in respect of such estate have been already considered (pp. 25—29) As to the powers now conferred on a tenant for life of a settled estate, see Settled Land Act, 1882 (45 & 46 Vict. c. 38), Appendix, p. 100.

1. No restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property, *to be made or entered into* by herself shall have any validity against debts contracted by her before marriage. **Act, 1882, s. 19.**

Restraint on anticipation no bar to ante-nuptial debts.

We have seen that it was held under sect. 12 of the Act of 1870 that a restraint on anticipation was no protection of equitable separate estate against a wife's ante-nuptial contract debts (*Sanger v. Sanger*, 11 Eq. 470). Thus, though the present section only in form refers to the future settlements, the rule which it lays down is equally applicable to existing settlements. But seeing that the words of this section are confined to "debts contracted," the question arises whether the restraint will avail to protect her settled estate against liability for her ante-nuptial torts and breaches of contract. The principle upon which *Sanger v. Sanger* was decided would seem now to apply equally to these liabilities as to contract debts. It might even be contended that the principle, if fully carried out, would now extend to the wife's contracts during coverture, for which the husband is not liable (sect. 1); but such can hardly be sustained in the presence of the express saving of the effects of the restraint here provided. As to torts, *quare?*

2. No settlement, or agreement for a settlement shall have any greater force or validity against a woman's creditors, than a like settlement, or agreement for a settlement, made or entered into by a man would have against his creditors.

It would occupy too much space here to enter upon the whole question of voluntary settlements and trusts. It is well known that a settlement made in consideration of marriage holds good as against the creditors of, and subsequent purchasers from a husband. Again, an ante-nuptial written agreement, followed by marriage is sufficient to protect the objects thereof (*Teesdale v. Braithwaite*, 4 Ch. D. 85; 5 *ib.* 630). On the contrary, a post-nuptial settlement, not made in pursuance of an ante-nuptial agreement, is liable to be set aside by creditors under 13 Eliz. c. 5, and is void against subsequent purchasers, even with notice, under 27 Eliz. c. 4 (*Butterfield v. Heath*, 15 Beav. 408); and this is apparently the case if such a settlement be made in pursuance of an ante-nuptial parol agreement (*Trowell v. Shenton*, 8 Ch. D. 318.) Voluntary settlements when void as against creditors.



**Act, 1882.** The rights of creditors as against voluntary settlements ss. 19, 20. (which include, of course, post-nuptial settlements not made pursuant to an ante-nuptial agreement), depend upon circumstances. If the settlement is made under circumstances from which fraud may be inferred, it is void as against them. Fraud will be inferred if the settlor is insolvent at the time of the settlement, or if it can be shown that he was largely indebted (*Taylor v. Coenen*, 1 Ch. D. 636), or that after deducting the settled property sufficient available assets are not left for payment of the debts (*Freeman v. Pope*, 5 Ch. 538). And the protection is not limited to those who were creditors at the time of the settlement (*Ware v. Gardner*, 7 Eq. 317; *Mackay v. Douglas*, 14 ib. 106). The question depends entirely upon the existence or non-existence of a fraudulent intent (*Holmes v. Penny*, 3 K. & J. 90; *Golden v. Gillam*, 20 Ch. D. 389).

32 & 33  
Vict.  
c. 71,  
s. 91.

By the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), sect. 91, any settlement made by a *trader* within two years previous to his bankruptcy is void as against his creditors; and in case of bankruptcy within ten years of such settlement the burden of proof is thrown upon the parties claiming under the settlement of proving that the settlor was at the time of making it able to pay his debts. But the section excepts from its operation settlements made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to him after marriage in right of his wife.

Law now  
the same  
for women  
as for  
men.

Such is, in brief, the law as respecting the rights of creditors against voluntary settlements. The present statute applies it as well to settlements made by women as to those made by men; and it may be observed that the language of the Act includes all settlements or agreements for settlements existent as well as future.

Married  
woman  
to be  
liable  
to the  
parish  
for the  
main-  
tenance

**20.** Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and

enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by the same actions and proceedings as money lent.

Act. 1862,  
s. 20.  
—  
Maintenance of  
her hus-  
band.  
31 & 32  
Vict.  
c. 122.

This section is a verbatim re-enactment of sect. 13 of the Act of 1870, with the addition of the words, "out of such separate property," after the words "maintenance of her husband." In both statutes the liability extends to equitable as well as statutory separate property.

Section 33 of the Poor-Law Amendment Act, 1868 (31 & 32 Vict. c. 122), here referred to, was as follows:—  
"When a married woman requires relief without her husband, the guardians of the union or parish, or the overseers of the parish, as the case may be, to which she becomes chargeable, may apply to the justices having jurisdiction in such union or parish in petty sessions assembled, and thereupon such justices may summon such husband to appear before them to show cause why an order should not be made upon him to maintain his wife; and upon his appearance, or in the event of his not appearing, upon proof of the due service of such summons upon him, such justices may, after hearing such wife upon oath, or receiving such other evidence as they may deem sufficient, make an order upon him to pay such sum, weekly or otherwise, towards the costs of the relief of the wife, as after consideration of all the circumstances of the case shall appear to them to be proper, and shall determine in such order how and to whom the payments shall from time to time be made; which order shall, if the payments required by it to be made be in arrear, be enforced in the manner prescribed

31 & 32  
Vict.  
c. 122,  
s. 33.

**Act, 1882,** by the Act of 11 & 12 Vict. c. 43, for the enforcing of  
**s. 20.** orders of justices requiring the payment of a sum of money : Provided that such order may be at any future time revoked by the justices in petty sessions assembled, if they see sufficient cause for so doing " (see also. 39 & 40 Vict. c. 61, s. 19).

**11 & 12** By 11 & 12 Vict. c. 43, s. 19, where an order is made  
**Vict.** by justices requiring payment of a sum of money, they  
**c. 43,** are empowered to issue a warrant of distress, to levy the  
**s. 19.** same, and in default to commit to prison the person on whom such order was made.

The following decisions on the Acts may be quoted with advantage :—

**Decisions.** When a husband had ceased to cohabit with his wife, on the ground of her adultery, it was held that he was not liable to a maintenance order under the above section (*Culley v. Charman*, 7 Q. B. D. 89.) Under similar circumstances this decision would doubtless be followed in favour of a wife.

In *Elliott v. Hooper* (W. N. 1874, p. 57) it was decided that the Court of Chancery had no jurisdiction in dealing with a fund in Court to put a stop order on the fund, or to pay it out subject to the claim of the guardians.

**Presump-** On the ground of a husband's liability at law to  
**tion of** maintain his wife, it was long ago established in equity  
**advance-** that if a husband purchased property in his wife's name,  
**ment not** the relationship between them sufficed to prevent a  
**affected.** resulting trust from arising in his favour, as would have been the case between strangers ; in other words the relation of husband and wife raised a presumption of advancement (*Kingdon v. Bridges*, 2 Vern. 67). The same rule applied on similar ground as between father and child (*Dyer v. D.*, 2 Cox, 92 ; 1 W. & T. L. C. 223). When by sect. 14 of the Act of 1870, a married woman was made liable to the maintenance of her children out of her separate estate, it was argued that this liability should have the effect of raising a presumption of advancement between a mother and child : but it was held that the obligation was not of the same nature as that of a father, and that no presumption of advancement arose in the absence of other evidence of such intention (*Bennet v. B.*, 10 Ch. D. 474). *A fortiori* no presumption would arise in case of a purchase in the name of a husband.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

Act, 1882,  
s. 21.

Married woman to be liable to the parish for the maintenance of her children.

By sect. 14 of the Act of 1870, a married woman having separate property, was made liable to the maintenance of her children in the same manner that a widow was then by law subject. The present section differs: firstly, by extending the liability to the case of grandchildren as well as children; secondly, by substituting the word "husband" for widow.

The express mention of grandchildren was rendered necessary by the case of *Coleman v. Overseers of Birmingham* (6 Q. B. D. 615), in which it was held that the former Act did not extend to them.

Grand-children included.

The substitution of a husband instead of a widow as the measure of a married woman's liability has an important effect. It was held in *Douglas v. Andrews* (12 Beav. 310) that a widow was under no liability to support her children if they possessed property of their own which could be resorted to. On the other hand, the father's liability is independent of the ownership of property by his children. By the present section this now becomes the same in the case of a mother who has separate property. To this extent therefore the practice of equity as to the maintenance of wards of Court is varied in their favour. It may be mentioned that apart from statute, children had no claim, even in equity, to any contribution for their support from their mother's separate estate while their father was living (*Hodgens v. H.*, 4 Cl. & F. 323, 373).

Maintenance in equity.

We have seen that the equitable doctrine of advancement was unchanged by the Act of 1870. The substitution of the word "husband" for "widow" may give rise to further argument on the point; but it is submitted that the liability being still secondary to that of the father, the same rule as before will be sustained. It may

Advancement.

**Act, 1882,** be stated that the presumption of advancement arises in  
**ss. 21, 22,** case of a purchase by a widow (*Sayre v. Hughes*, 5 Eq. 376).  
**23.**

Poor law  
 liability.

As to the liability of a husband for the support of his children and the children of his wife and in respect of their Poor Law relief, see Archbold's Poor Law, pp. 187 *et seq.*; 3 & 4 Will. IV. c. 76, ss. 56, 57; 31 & 32 Vict. c. 122, s. 37; 39 & 40 Vict. c. 61, s. 19.

In this section as in the last, equitable as well as statutory separate estate is included.

Repeal of  
 33 & 34  
 Vict.  
 c. 93,  
 37 & 38  
 Vict.  
 c. 50.

**22.** The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

By sect. 5, as we have seen, the rights of husbands as to property vested in them by marital right before January 1st, 1883, are preserved. As to the liabilities of husbands and wives under the former Acts, see sects. 13 & 14 and the notes thereon, pp. 62—68.

Legal  
 represen-  
 tatives of  
 married  
 woman.

**23.** For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

The wording of this section is not free from obscurity, but its effect appears to be to invest the legal personal representative of a married woman with the same rights and liabilities as the legal personal representative of a man or of a feme sole. By sect. 1, we find a complete

testamentary power given to a married woman as to her separate property, and we also find her invested with a power of contracting and of suing, and also rendered liable to suit as a feme sole. To complete the reform it only remained to assimilate the administration of a married woman's estate to that of the estate of a feme sole. This involved a wide departure in principle from the old law, by which an executor of a married woman took only as an appointee under a power, and his interest was accordingly confined to the fund appointed, not extending as in the case of a person *sui juris* to a complete representation of the deceased's estate. Act, 1882,  
ss. 23, 24.

The words of the section do not seem to be confined to this; for it is particularly observable that they are not limited to separate *personal* estate; and it may be therefore argued that by virtue thereof the real property of a married woman will primarily rest in her executor or administrator subject to her debts or liabilities. Such may be the intention of the statute, or if not, such may be its interpretation; but it is not a little surprising that so important a change in the principle of administration of real property should be introduced by implication only, and in such a manner as to be confined to the case of married women. Personal  
estate  
intended,  
*quære!*

It seems clear that nothing in this section is intended to affect the beneficial interests of the successors of a married woman under an intestacy; the rights of her heir, the curtesy of her husband, as to realty; and the rights of her husband to the administration and beneficial enjoyment of her personalty, remain. Intestate  
succe-  
sion not  
changed.

24. The word "contract" in this Act shall include the acceptance of any trust, or the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this Act includes a thing in action. Interpreta-  
tion of  
terms.

**Act, 1882,** Under the consideration of sect. 18, we have already  
**ss. 24, 25,** dealt with the position and liabilities of a married woman  
**26, 27.** trustee or executrix, or administratrix.

As to what constitutes a thing or chose in action see  
*Fleet v. Perrins* (3 L. R. Q. B. 536); 4 *ibid.* 500; Steph.  
 Comm. ii. 11, 7th Edit.

**Commence-** **25.** The date of the commencement of this Act  
**ment of** shall be the first of January one thousand eight  
**Act.** hundred and eighty-three.

**Extent of** **26.** This Act shall not extend to Scotland.  
**Act.**

For the law as to property of married women in  
 Scotland, see 40 & 41 Vict. c. 49; 43 & 44 Vict. c. 26;  
 44 & 45 Vict. c. 21.

**Short** **27.** This Act may be cited as the Married  
**title.** Women's Property Act, 1882.

# APPENDIX.

## MARRIED WOMEN'S PROPERTY ACT, 1870.

(33 & 34 VICT. c. 93.)

*An Act to amend the Law relating to the Property  
of Married Women.* [9th August, 1870.]

WHEREAS it is desirable to amend the law of pro- Act, 1870,  
ss. 1, 2.  
perty and contract with respect to married women :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The wages and earnings of any married woman Earnings  
of married  
women to  
be deemed  
their own  
property.  
acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and also any money, or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property.

2. Notwithstanding any provision to the contrary Deposits  
in savings  
banks by  
a married  
woman to  
in the Act of the tenth year of George the Fourth, chapter twenty-four, enabling the Commissioners for the Reduction of the National Debt to grant life



**Act, 1870,** annuities and annuities for terms of years, or in ss. 2, 3, 4. the Acts relating to savings banks and post office savings banks, any deposit hereafter made and any annuity granted by the said Commissioners under any of the said Acts in the name of a married woman, or in the name of a woman who may marry after such deposit or grant, shall be deemed to be the separate property of such woman, and the same shall be accounted for and paid to her as if she were an unmarried woman; provided that if any such deposit is made by, or such annuity granted to a married woman by means of moneys of her husband without his consent, the court may, upon an application under section nine of this Act, order such deposit or annuity or any part thereof to be paid to the husband.

be deemed  
her sepa-  
rate pro-  
perty.

Proviso.

As to a  
married  
woman's  
property in  
the funds.

3. Any married woman, or any woman about to be married, may apply to the governor and company of the Bank of England, or to the governor and company of the Bank of Ireland, by a form to be provided by the governor of each of the said banks and company for that purpose, that any sum forming part of the public stocks and funds, and not being less than twenty pounds, to which the woman so applying is entitled, or which she is about to acquire, may be transferred to or made to stand in the books of the governor and company to whom such application is made in the name or intended name of the woman as a married woman entitled to her separate use, and on such sum being entered in the books of the said governor and company accordingly the same shall be deemed to be the separate property of such woman, and shall be transferred and the dividends paid as if she were an unmarried woman; provided that if any such investment in the funds is made by a married woman by means of moneys of her husband without his consent, the court may, upon an application under section nine of this Act, order such investment and the dividends thereof, or any part thereof, to be transferred and paid to the husband.

4. Any married woman, or any woman about to be married, may apply in writing to the directors or managers of any incorporated or joint stock company that any fully paid up shares, or any debenture or debenture stock, or any stock, of such company, to the holding of which no liability is attached, and to which the woman so applying is entitled, may be registered in the books of the said company in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such directors or managers to register such shares or stock accordingly, and the same upon being so registered shall be deemed to be the separate property of such woman, and shall be transferred and the dividends and profits paid as if she were an unmarried woman; provided that if any such investment as last mentioned is made by a married woman by means of moneys of her husband without his consent, the court may, upon an application under section nine of this Act, order such investment and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband.

Act, 1870,  
ss. 4, 5.

As to a married woman's property in a joint stock company.

5. Any married woman, or any woman about to be married, may apply in writing to the committee of management of any industrial and provident society, or to the trustees of any friendly society, benefit building society, or loan society, duly registered, certified, or enrolled under the Acts relating to such societies respectively, that any share, benefit, debenture, right or claim whatsoever in, to or upon the funds of such society, to the holding of which share, benefit or debenture no liability is attached, and to which the woman so applying is entitled, may be entered in the books of the society in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such committee or trustees to cause the same to be so entered, and thereupon such share, benefit, debenture, right or claim shall be deemed to be the separate property of such woman, and

As to a married woman's property in a society.

**Act, 1870,** shall be transferable and payable with all dividends  
**ss. 5, 6, 7,** and profits thereon as if she were an unmarried  
**8, 9.** woman; provided that if any such share, benefit,  
 debenture, right or claim has been obtained by a  
 married woman by means of moneys of her husband  
 without his consent, the court may, upon an appli-  
 cation under section nine of this Act, order the  
 same and the dividends and profits thereon, or any  
 part thereof, to be transferred and paid to the  
 husband.

Deposit of  
 moneys in  
 fraud of  
 creditors  
 invalid.

**6.** Nothing hereinbefore contained in reference to  
 moneys deposited in or annuities granted by savings  
 banks or moneys invested in the funds or in shares  
 or stock of any company shall as against creditors  
 of the husband give validity to any deposit or in-  
 vestment of moneys of the husband made in fraud  
 of such creditors, and any moneys so deposited or  
 invested may be followed as if this Act had not  
 passed.

Personal  
 property  
 not exceed-  
 ing 200*l.*  
 coming to  
 a married  
 woman to  
 be her  
 own.

**7.** Where any woman married after the passing  
 of this Act shall during her marriage become en-  
 titled to any personal property as next of kin or  
 one of the next of kin of an intestate, or to any  
 sum of money not exceeding two hundred pounds  
 under any deed or will, such property shall, subject  
 and without prejudice to the trusts of any settle-  
 ment affecting the same, belong to the woman for  
 her separate use, and her receipts alone shall be a  
 good discharge for the same.

Freehold  
 property  
 coming to  
 a married  
 woman,  
 rents and  
 profits only  
 to be her  
 own.

**8.** Where any freehold, copyhold or customary-  
 hold property shall descend upon any woman mar-  
 ried after the passing of this Act as heiress or co-  
 heiress of an intestate, the rents and profits of such  
 property shall, subject and without prejudice to  
 the trusts of any settlement affecting the same,  
 belong to such woman for her separate use, and her  
 receipts alone shall be a good discharge for the  
 same.

How ques-  
 tions as to  
 ownership  
 of property  
 to be  
 settled.

**9.** In any question between husband and wife as  
 to property declared by this Act to be the separate  
 property of the wife, either party may apply by

summons or motion in a summary way either to the Court of Chancery in England or Ireland according as such property is in England or Ireland, or in England (irrespective of the value of the property) the judge of the county court of the district in which either party resides, and thereupon the judge may make such order, direct such inquiry, and award such costs as he shall think fit; provided that any order made by such judge shall be subject to appeal in the same manner as the order of the same judge made in a pending suit or on an equitable plaint would have been, and the judge may, if either party so require, hear the application in his private room.

10. A married woman may effect a policy of insurance upon her own life or the life of her husband for her separate use, and the same and all benefit thereof, if expressed on the face of it to be so effected, and shall enure accordingly, and the contract in such policy shall be as valid as if made with an unmarried woman.

A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate. When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by the Court of Chancery in England or in Ireland according as the policy of insurance was effected in England or in Ireland, or in England by the judge of the county court of the district, or in Ireland by the chairman of the civil bill court of the division of the county, in which the insurance office is situated, and the receipt of such trustee shall be a good discharge to the office. If it shall be proved that the policy was

Act, 1870,  
ss. 9, 10.

Married  
woman  
may effect  
policy of  
insurance.

As to in-  
surance of  
a husband  
for benefit  
of his wife.

**Act, 1870,** effected and premiums paid by the husband with  
**ss. 10, 11,** intent to defraud his creditors, they shall be entitled  
**12, 13.** to receive out of the sum secured an amount equal  
 to the premiums so paid.

Married  
 women  
 may main-  
 tain an  
 action.

**11.** A married woman may maintain an action in her own name for the recovery of any wages, earnings, money, and property by this Act declared to be her separate property, or of any property belonging to her before marriage, and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property, and she shall have in her own name the same remedies, both civil and criminal, against all persons whomsoever for the protection and security of such wages, earnings, money and property, and of any chattels, or other property purchased or obtained by means thereof for her own use, as if such wages, earnings, money, chattels, and property belonged to her as an unmarried woman; and in any indictment or other proceeding it shall be sufficient to allege such wages, earnings, money, chattels and property to be her property.

Husband  
 not to be  
 liable on  
 his wife's  
 contracts  
 before  
 marriage.

**12.** A husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such debts as if she had continued unmarried.

Married  
 woman to  
 be liable  
 to the  
 parish for  
 the main-  
 tenance  
 of her  
 husband.

**13.** Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband as by the thirty-third section of "The Poor Law Amendment Act, 1868," they may now make and enforce against a husband for the maintenance of his wife who becomes chargeable to any union or parish. Where in Ireland relief is

given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by such and the same actions and proceedings as money lent.

14. A married woman having separate property shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children : provided always, that nothing in this Act shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

15. This Act shall come into operation at the time of the passing of this Act.

16. This Act shall not extend to Scotland.

17. This Act may be cited as the " Married Women's Property Act, 1870."

Act, 1870,  
ss. 13, 14,  
15, 16, 17.

Married woman to be liable to the parish for the maintenance of her children.

Commencement of Act.

Act not to extend to Scotland.

Short title.

## MARRIED WOMEN'S PROPERTY ACT (1870) AMENDMENT ACT, 1874.

(37 & 38 VICT. c. 50.)

*An Act to amend the Married Women's Property Act, 1870.* Act, 1874,  
[30th July, 1874.]

WHEREAS it is not just that the property which a woman has at the time of her marriage should pass to her husband, and that he should not be liable for her debts contracted before marriage, and the law as to the recovery of such debts requires amendment :

Be it enacted by the Queen's most Excellent

Act, 1870, effected and premiums p consent of the  
 ss. 10, 11, intent to defraud his cre Commons, i  
 12, 13, to receive out of the s and by

Married women may maintain an action. 11. A married woman in her own name for her earnings, money, and be her separate property, in such action and in any damages sustained by reason of all personal injuries sustained by the wife before marriage or rity of s the breach of any contract made by and of before marriage, be liable for the debt or obtain such assets respectively to the extent only of the assets bel after specified; and in addition to any other ar or pleas may plead that he is not liable to pay the debt or damages in respect of any such assets as hereinafter specified; or, confessing his liability to some amount, that he is not liable beyond what he so confesses; and if no such plea is pleaded the husband shall be deemed to have confessed his liability so far as assets are concerned.

Husband not to be liable on his wife's contract before marriage.

3. If it is not found in such action, that the husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife.

4. When a husband and wife are sued jointly, if by confession or otherwise it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband and wife, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife.

Joint and separate judgment against husband and wife for debt.

Assets for which husband liable.

5. The assets in respect of and to the extent of which the husband shall in any such action be liable are as follows :

the value of the property of the wife which she shall be liable, Act, 1857, ss. 25, 26.  
 and: is hereby em-  
 of the ific property,  
 h value of the  
 as afore-  
 made, the  
 and be  
 of her,  
 d to  
 ed,  
 a

- (4.) The value of the rents and profits of the estate of the wife, which the husband shall have received, or with reasonable diligence might have received : In case of judicial separation wife to a
- (5.) The value of the husband's estate or interest in any property real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person :
- (6.) The value of any property, real or personal, which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors :

Provided that when the husband after marriage pays any debt of his wife or has a judgment bonâ fide recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable.

6. This Act shall not extend to Scotland.

7. This Act may be cited as the "Married Women's Property Act (1870) Amendment Act, 1874." Extent of Act. Short title.



## THE DIVORCE AND MATRIMONIAL CAUSES ACT, 1857.

(20 & 21 VICT. c. 85.)

**Act, 1857,** *An Act to amend the Law relating to Divorce and*  
**s. 21.** *Matrimonial Causes in England.*

[28th August, 1857.]

Wife de-  
serted by  
her hus-  
band may  
apply to  
a police  
magistrate  
or justices  
in petty  
sessions for  
protection.

**21.** A wife deserted by her husband may at any time after such desertion, if resident within the metropolitan district, apply to a police magistrate, or if resident in the country to justices in Petty Sessions, or in either case to the Court, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of, after such desertion, against her husband or his creditors, or any person claiming under him; and such magistrate or justices or court, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion, from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a feme sole: Provided always, that every such order, if made by a police magistrate or justices at Petty Sessions, shall, within ten days after the making thereof, be entered with the registrar of the County Court within whose jurisdiction the wife is resident; and that it shall be lawful for the husband, and any creditor or other person claiming under him, to apply to the Court, or to the magistrate or justices by whom such order was made, for the discharge thereof: Provided also, that if the husband or any creditor of or person claiming under the husband

shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid: If any such order of protection be made, the wife shall during the continuance thereof be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts, and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation. Act, 1857,  
ss. 25, 26.

25. In every case of a judicial separation the wife shall, from the date of the sentence and whilst the separation shall continue, be considered as a feme sole with respect to property of every description which she may acquire or which may come to or devolve upon her; and such property may be disposed of by her in all respects as a feme sole, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead: Provided, that if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate. In case of  
judicial  
separation  
the wife to  
be con-  
sidered a  
feme sole  
with re-  
spect to  
property  
she may  
acquire,  
&c.;

26. In every case of a judicial separation the wife shall, whilst so separated, be considered as a feme sole for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant: Provided, that where upon any such judicial separation alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for also, for  
purposes  
of contract  
and suing.

Act, 1857,  
s. 26. necessities supplied for her use; provided also, that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

For decisions under this and the following Act, see pp. 17—20, and 33.

## THE DIVORCE AND MATRIMONIAL CAUSES ACT AMENDMENT ACT, 1858.

(21 & 22 VICT. c. 108.)

Act, 1858,  
ss. 7, 8. *An Act to amend the Act of the Twentieth and Twenty-first Victoria, Chapter Eighty-five.*  
[2nd August, 1858.]

Provisions respecting property of wife to extend to property vested in her as executrix, &c.

7. The provisions contained in this Act and in the said Act of the twentieth and twenty-first *Victoria*, chapter eighty-five, respecting the property of a wife who has obtained a decree for judicial separation or an order for protection, shall be deemed to extend to property to which such wife has become or shall become entitled as executrix, administratrix, or trustee since the sentence of separation or the commencement of the desertion (as the case may be); and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

Order for protection of earnings, &c., of wife to be deemed valid.

8. In every case in which a wife shall under this Act or under the said Act of the twentieth and twenty-first *Victoria*, chapter eighty-five, have obtained an order to protect her earnings or property, or a decree for a judicial separation, such order or decree shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal with the wife, be deemed valid and effectual; and no discharge, variation, or re-

versal of such order or decree shall prejudice or affect any rights or remedies which any person would have had in case the same had not been so reversed, varied, or discharged in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the making such order or decree and of the discharge, variation, or reversal thereof; and property of or to which the wife is possessed or entitled for an estate in remainder or reversion at the date of the desertion or decree (as the case may be), shall be deemed to be included in the protection given by the order or decree.

Act, 1858,  
s. 8.

## CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

(44 & 45 VICT. c. 41.)

*An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes.*

Act, 1881,  
ss. 39 (1),  
(2), 40 (1).

[22nd August, 1881.]

### VIII.—MARRIED WOMEN.

MARRIED  
WOMEN.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

Power for  
Court to  
bind inte-  
rest of  
married  
woman.

(2.) This section applies only to judgments or orders made after the commencement of this Act.

40. (1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she

Power of  
attorney

**Act, 1881,** ss. 40 (1),  
 (2), 50 (1),  
 (2).  
 of married  
 woman.

were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

(2.) This section applies only to deeds executed after the commencement of this Act.

**Conveyance**  
 by a person  
 to himself,  
 &c.

**50.—**(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

(2.) This section applies only to conveyances made after the commencement of this Act.

## CONVEYANCING ACT, 1882.

(45 & 46 VICT. c. 39.)

**Act, 1882,** *An Act for further improving the Practice of Conveyancing; and for other purposes.*  
 s. 1 (1), (2).

[10th August, 1882.]

**PRE-  
 LIMINARY.**

**PRELIMINARY.**

**Short  
 titles ;  
 commence-  
 ment ;  
 extent ;  
 interpreta-  
 tion.**

**44 & 45  
 Vict. c. 41.**

**1.—**(1.) This Act may be cited as the Conveyancing Act, 1882; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881), and this Act may be cited together as the Conveyancing Acts, 1881, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which

time is in this Act referred to as the commencement of this Act. **Act, 1882,**  
**ss. 1 (2),**

(3.) This Act does not extend to Scotland. **(3), (4)**

(4.) In this Act and in the schedule thereto— **(1), (ii), (iii),**  
**7 (1).**

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not;

(ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser.

(iii.) The Act of the session of the third and fourth years of King William the Fourth **3 & 4 Will. 4, c. 74.** (chapter seventy-four), “for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance,” is referred to as the Fines and Recoveries Act; and the Act of the session of the fourth and fifth years of King William the Fourth **4 & 5 Will. 4, c. 92.** (chapter ninety-two), “for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland,” is referred to as the Fines and Recoveries (Ireland) Act.

#### MARRIED WOMEN.

#### MARRIED WOMEN.

7. (1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words “two of the perpetual commissioners, or two special commissioners,” the words “one of the perpetual commissioners, or one special commissioner;” and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this

Acknowledgment of deeds by married women.

**Act, 1882,** Act, be substituted for the word "persons" the  
**s. 7 (1), (2),** word "person" and for the word "commissioners"  
**(3), (4).** the words "a commissioner;" and all other provisions  
of those Acts, and all other enactments having refer-  
ence in any manner to the sections aforesaid, shall  
be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment  
by a married woman of a deed purports to be signed  
by a person authorized to take the acknowledgment,  
the deed shall, as regards the execution thereof by  
the married woman, take effect at the time of ac-  
knowledgment, and shall be conclusively taken to  
have been duly acknowledged.

(3.) A deed acknowledged before or after the  
commencement of this Act by a married woman,  
before a judge of the High Court of Justice in  
England or Ireland, or before a judge of a county  
court in England, or before a chairman in Ireland,  
or before a perpetual commissioner or a special  
commissioner, shall not be impeached or impeach-  
able by reason only that such judge, chairman, or  
commissioner was interested or concerned either as  
a party, or as solicitor, or clerk to the solicitor for  
one of the parties, or otherwise, in the transaction  
giving occasion for the acknowledgment; and gene-  
ral rules shall be made for preventing any person  
interested or concerned as aforesaid from taking an  
acknowledgment; but no such rule shall make in-  
valid any acknowledgment; and those rules shall,  
as regards England, be deemed rules of Court within  
section seventeen of the Appellate Jurisdiction Act,  
1876, as altered by section nineteen of the Supreme  
Court of Judicature Act, 1881, and shall, as regards  
Ireland, be deemed rules of Court within the Su-  
preme Court of Judicature Act (Ireland), 1877, and  
may be made accordingly, for England and Ireland  
respectively, at any time after the passing of this  
Act, to take effect on or after the commencement of  
this Act.

(4.) The enactments described in the schedule to  
this Act are hereby repealed.

39 & 40  
Vict. c. 59.  
44 & 45  
Vict. c. 68.  
40 & 41  
Vict. c. 57.

(5.) The foregoing provisions of this section, **Act, 1882,** including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act. **s. 7 (5), (6), (7), (8).**

(6.) Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

The schedule above referred to comprises the following statutes:

3 & 4 Will. IV. c. 74 (Fines and Recoveries), s. 84, from and including the words "and the same judge" to the end of that section, ss. 85 to 88 inclusive.

4 & 5 Will. IV. c. 92 (Fines and Recoveries Ireland), s. 75, from and including the words "and the same judge" to the end of that section, ss. 76 to 79 inclusive.

17 & 18 Vict. c. 75; 41 & 42 Vict. c. 23.



## SETTLED LAND ACT, 1882.

(45 &amp; 46 VICT. c. 38.)

Act, 1882, *An Act for facilitating Sales, Leases, and other*  
 ss. 1 (1), *dispositions of Settled Land, and for promoting*  
 (2), (3), 59, *the execution of Improvements thereon.*  
 60.

[10th August, 1882.]

PRE-  
LIMINARY.

## I.—PRELIMINARY.

Short  
title;  
commence-  
ment;  
extent.

1.—(1.) This Act may be cited as the Settled Land Act, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

INFANTS;  
MARRIED  
WOMEN.

## XIV.—INFANTS; MARRIED WOMEN.

Infant  
absolutely  
entitled to  
be as  
tenant for  
life.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

Tenant for  
life, infant.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or

other guardian or next friend of the infant, either Act, 1882, s. 61 (1), (2), (3), (4), (5), (6).  
generally or in a particular instance, orders.

**61.**—(1.) The foregoing provisions of this Act do not apply in the case of a married woman.

(2.) Where a married woman, who, if she had not been a married woman, would have been a tenant for life, or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act. Married woman, how to be affected.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.



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